

**THIS SECOND SUPPLEMENTAL AGREEMENT** is made on **12 MAY 2004**

**BETWEEN**

(1) **LONDON UNDERGROUND LIMITED** whose registered office is at 55 Broadway, London SW1H 0BD (LUL); and

(2) **TUBE LINES LIMITED** whose registered office is at 15 Westferry Circus, Canary Wharf, London E14 4HD (Infraco).

**WHEREAS**

(A) By a contract dated 31 December 2002 (***the AR Service Contract***) the parties agreed that the Amended and Restated Contract dated 4 April 2002 between LUL and Infraco was amended and restated to be read and construed and otherwise take effect in the form of that contract upon all the conditions to the AR Service Contract being a PPP agreement (set out in section 210 of the GLA Act) having been satisfied and upon completion of the transfer of all of the issued share capital in Infraco (other than the Special Share) to the private sector pursuant to the Share Purchase Agreement.

(B) By a supplemental agreement also dated 31 December 2002 (***the First Supplemental Agreement***) the parties agreed to amend the AR Service Contract to address:

- (1) the possibility that an application may be made for judicial review of any aspect of the PPP or the Transaction Documents and the court may make an order setting aside or quashing any aspect of the PPP or the Transaction Documents; and
- (2) the possibility that any provision of any Transaction Document (in the form agreed before the Transfer Date) may be the subject of a legal challenge or appeal by the European Commission, or before the European Court of First Instance or the European Court of Justice (each, a "European Court"), in which it is alleged that such provision of such Transaction Document amounts to state aid within the meaning of Article 87.1 of the EC Treaty and, following one or more European Commission decisions or European Court judgments made as a consequence of that legal challenge or appeal, the Government takes any steps to recover, alter or abolish that state aid.

(C) The AR Service Contract has also been amended since 31 December 2002 as a result of the implementation by LUL of certain LUL Specified Rights.

(D) The parties are entering into this Supplemental Agreement in order to amend certain provisions of the AR Service Contract as amended by the First Supplemental Agreement and otherwise as described in Recital (C) (***the Existing Service Contract***).

(E) It is intended that the Existing Service Contract as amended by this Supplemental Agreement shall be a PPP agreement as defined in section 210 of the GLA Act.

**IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATION**

- 1.1 To the extent applicable, the provisions of this Supplemental Agreement shall be interpreted in accordance with clause 1.2 of the Master Definitions Agreement dated 1 April 2000 made between LUL, Infraco, BCV and SSL as amended and restated.
- 1.2 Words and expressions used in this Supplemental Agreement shall, to the extent applicable and unless defined herein or the context otherwise requires, have the meaning assigned to them in the MDA.
- 1.3 Notwithstanding the MDA, as between LUL and Infraco this Supplemental Agreement shall be treated as a Transaction Document for all purposes.

**2. SUPPLEMENTAL AGREEMENT**

- 2.1 This Supplemental Agreement is supplemental to the Existing Service Contract.
- 2.2 The tendering of this Supplemental Agreement to LUL for signature shall be deemed to be a proposal by Infraco for a change to the Existing Service Contract as referred to in paragraph 1 of Schedule 5.8 to the Existing Service Contract, and the signature by LUL of this Supplemental Agreement shall be LUL's response pursuant to paragraph 3 of that Schedule, and shall also be deemed to be the record in writing of the change for the purpose of paragraph 4 of that Schedule.

**3. OPERATIVE PROVISIONS**

- 3.1 The parties to this Supplemental Agreement agree that:
  - (a) clause 18 of the Existing Service Contract shall be replaced by the version of clause 18 set out in Schedule 1 to this Supplemental Agreement;
  - (b) clause 31 of the Existing Service Contract shall be replaced by the version of clause 31 set out in Schedule 2 to this Supplemental Agreement;
  - (c) clause 33 of the Existing Service Contract shall be replaced by the version of clause 33 set out in Schedule 3 to this Supplemental Agreement;
  - (d) clause 40.3 of the Existing Service Contract shall be replaced by the version of clause 40.3 set out in Schedule 4 to this Supplemental Agreement
  - (e) clause 41 of the Existing Service Contract shall be replaced by the version of clause 41 set out in Schedule 5 to this Supplemental Agreement;
  - (f) clause 57.1 of the Existing Service Contract shall be replaced by the version of clause 57.1 set out in Part I of Schedule 6 of this Supplemental Agreement;

- (g) clause 57.3 of the Existing Service Contract shall be replaced by the version of clause 57.3 set out in Part II of Schedule 6 of this Supplemental Agreement.
  - (h) clause 63.3 of the Existing Service Contract shall be replaced by the version of the clause 63.3 set out in Part III of Schedule 6 of this Supplemental Agreement;
  - (i) a new clause 63.5 shall be added to the Existing Service Contract after clause 63.4 in the form set out in Part IV of Schedule 6 to this Supplemental Agreement
  - (j) Schedule 1.9 of the Existing Service Contract shall be amended in the manner set out in Schedule 7 to this Supplemental Agreement;
  - (k) Schedule 5.16 of the Existing Service Contract shall be replaced by the version of Schedule 5.16 set out in Schedule 8 to this Supplemental Agreement;
  - (l) notwithstanding the MDA, for the purposes of this Agreement and, as between LUL and Infraco, for the purposes of the Transaction Documents, the Share Purchase Agreement, and any other document or agreement which seeks to incorporate terms defined in the MDA, the expression "Approved Debt" shall have the meaning set out in Part 1 of Schedule 9 to this Supplemental Agreement;
  - (m) notwithstanding the MDA, for the purposes of this Agreement and, as between LUL and Infraco, for the purposes of the Transaction Documents, the Share Purchase Agreement, and any other document or agreement which seeks to incorporate terms defined in the MDA, the expression "Approved Mezzanine Debt" shall have the meaning set out in Part 2 of Schedule 9 to this Supplemental Agreement;
  - (n) notwithstanding the MDA, for the purposes of this Agreement and, as between LUL and Infraco, for the purposes of the Transaction Documents, the Share Purchase Agreement, and any other document or agreement which seeks to incorporate terms defined in the MDA, the expressions set out in Part 3 of Schedule 9 to this Supplemental Agreement shall have the meaning set out next to them in Part 3 of Schedule 9 to this Supplemental Agreement;
  - (o) a new Schedule 1.13 shall be added to the Existing Service Contract after Schedule 1.12 in the form set out in Schedule 10 to this Supplemental Agreement;
- 3.2 The parties to this Supplemental Agreement agree that the Existing Service Contract is hereby deemed to be amended and restated in its entirety with immediate effect including the amendments made pursuant to clause 3.1.

#### 4. PROVISIONS OF EXISTING SERVICE CONTRACT TO APPLY

- 4.1 The provisions of clauses 49 (*Dispute Resolution*), 54 (*Survival*), 55 (*Notices*), 56 (*Waiver*), 57 (*Assignment and Variations*), 58 (*Severability*), 59 (*Further Assurances*), 60 (*Language*), 61(*Costs*), 62 (*Entire Agreement*), 63 (*Application of Statutes*) of the Existing Service Contract shall apply to this Supplemental Agreement as if they were set out in full but with references to the Existing Service Contract replaced by references to this Supplemental Agreement.
- 4.2 Without prejudice to clause 49 (*Dispute Resolution*) of the Existing Service Contract, this Supplemental Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales as provided for in clauses 9.1 and 9.2 (*Jurisdiction and Enforcement*) of the Dispute Resolution Agreement.
- 4.3 Save as otherwise provided in this Supplemental Agreement, the Existing Service Contract shall remain in full force and effect in accordance with its terms. As from the date of this Supplemental Agreement, any and all references in the Existing Service Contract to "this Agreement", "hereunder" or other derivative description of the Existing Service Contract will be construed as references to the Existing Service Contract as amended by this Supplemental Agreement.

**SCHEDULE 1****CLAUSE 18 OF THE AMENDED AND RESTATED SERVICE CONTRACT****CLAUSE 18 - PAYMENT PROVISIONS****Payment Periods**

18.1 The first Payment Period in each Contract Year will commence on each anniversary of the Start Date. Each successive Payment Period in each Contract Year (except for the first Payment Period) shall commence on a Sunday being the date following the expiry of the previous Payment Period. The thirteenth Payment Period in each Contract Year shall not extend beyond the last day of each Contract Year and accordingly the first and thirteenth Payment Period in each Contract Year shall be of such duration that they will start on the first day and end on the last day respectively of each Contract Year. For the purpose of this Clause 18.1 the Payment Periods in the first Contract Year (as defined in the definition of the term "Contract Year" in the MDA) shall be deemed to run on sequentially without a break from the Payment Periods in the Contract Year which started on 1 April 2002).

**Payment Procedure**

18.2 For the purposes of this clause 18, if a day or date falls other than on a Business Day, such day or date shall be deemed to fall on the next following Business Day, save in the case of a Payment Date which shall be deemed to fall on the last Business Day of the Payment Period during which the relevant ISC Invoice is submitted.

18.3 On the fifteenth day of each Payment Period Infraco shall submit to LUL an ISC Adjustment Statement reflecting the adjustments to be made to Baseline ISC as a result of the calculations described in Schedule 4.1 (*Performance Payment Mechanism*) relating to the Payment Period two (2) Payment Periods prior to the Payment Period during which such ISC Adjustment Statement is submitted. Each ISC Adjustment Statement will have attached to it such supporting documentation as LUL has reasonably notified Infraco that it requires.

18.3A With the agreement of both Infraco and LUL, Infraco may at any time submit to LUL an interim ISC Adjustment Statement (an **Interim ISC Adjustment Statement**) in respect of such other adjustments to the Baseline ISC as may be agreed between Infraco and LUL. To avoid doubt, an Interim ISC Adjustment Statement shall constitute an ISC Adjustment Statement for the purposes of the Contract and the Master Definitions Agreement.

18.4 The ISC Adjustment Statement shall (and an Interim ISC Adjustment Statement may, if applicable) set out the following:

- (a) the Baseline ISC which relates to the Payment Period two (2) Payment Periods following the Payment Period during which the ISC Adjustment Statement is submitted;
- (b) the ISC Adjustment for the Payment Period two (2) Payment Periods prior to the Payment Period during which the ISC Adjustment Statement is submitted;

- (c) the amount (if any) of Upfront Benefit, pursuant to clause 31.6(i) or Over Time Benefit, pursuant to clause 31.6(k), or Benefit, pursuant to clause 31.6(q); and
- (d) for the purposes of this Contract, the definition of ISC Adjustment shall be amended by the addition of the following words at the end of that definition:

"and (in relation to JNP only) the amount of any Upfront Benefit or Over Time Benefit, pursuant to clause 31.6(e) of the Service Contract, or any Benefit pursuant to clause 31.6(p) of the Service Contract".

18.4A The ISC Adjustment Statement and the Interim ISC Adjustment Statement, if applicable, shall not include, and Infraco shall not be entitled to include, any amount relating to an increase to the Baseline ISC reflecting an increase to the Underlying ISC arising upon Delivery into Service of a Specified Line Upgrade due for Delivery into Service during the Payment Period to which the Underlying ISC figure relates, where it is reasonably likely that such Specified Line Upgrade will not be Delivered into Service by that date, notwithstanding that such date may be the Latest Implementation Date for such Specified Line Upgrade.

### **Disputed Amounts**

18.5 If LUL, acting reasonably, believes that the content of an ISC Adjustment Statement (or the calculations contained therein or in any supporting documentation) contains errors or omissions, LUL may challenge such content during the Challenge Period by serving a Challenge Notice provided such Challenge Notice shall not extend to any input which has previously been subject to a process for agreeing or determining that input in accordance with the Performance Measurement Code.

18.6 If one or more Challenge Notices have been delivered in respect of any amount or part thereof specified on an ISC Adjustment Statement, the parties shall use best endeavours to resolve the dispute in question within fourteen (14) days of receipt by Infraco of a Challenge Notice.

18.7 If the parties fail to resolve the Dispute within the timescale set out in clause 18.6, either party may refer any Dispute for determination in accordance with the dispute resolution procedure set out in the Dispute Resolution Agreement.

18.8 If any Dispute arising from a Challenge Notice is not resolved to the satisfaction of the parties prior to the Invoice Date next following the expiry of the Challenge Period, then without prejudice to clauses 18.6 and 18.7, the ISC Invoice submitted by Infraco on such Invoice Date shall include as the ISC Adjustment the following amount:

- (a) where the Dispute, if resolved in favour of LUL, would result in no or a positive ISC Adjustment, the amount claimed by LUL as the correct ISC Adjustment; or
- (b) where the Dispute, if resolved in favour of LUL, would result in a negative ISC Adjustment, the amount which is the greater of:
  - (i) that part of the negative ISC Adjustment set out on the ISC Adjustment Statement which is not subject to Dispute; and
  - (ii) the amount claimed by LUL as the correct ISC Adjustment up to a maximum of ten per cent. (10%) of the Baseline ISC set out on the ISC Adjustment Statement.

18.9 Following resolution of the Dispute under clauses 18.6 and 18.7, Infraco shall issue a notice stating the determination of the Resolution Amount (a **Resolution Notice**) which amount (together with an amount equal to interest at the Applicable Rate from the Payment Date otherwise applicable to such Resolution Amount had it not been disputed to the Payment Date on which it is paid) shall (if negative) be deducted from or (if positive) added to the Baseline ISC appearing on the ISC Invoice submitted on the Invoice Date next following the issuance of the Resolution Notice.

### **Invoicing**

18.10 On the seventh day of each Payment Period Infraco shall submit to LUL an ISC Invoice in relation to the Payment Period during which the ISC Invoice is submitted for an amount equal to the Baseline ISC plus or minus:

- (a) the ISC Adjustment set out on the ISC Adjustment Statement submitted during the Payment Period two Payment Periods prior to the Payment Period during which the ISC Invoice is submitted, but subject to the permitted withholding in clause 18.8;
- (aa) the ISC Adjustment set out on any Interim ISC Adjustment Statement submitted since the last ISC Invoice;
- (b) any Resolution Amount set out in any Resolution Notice issued by Infraco subsequent to the previous Invoice Date, together with any applicable interest; and
- (c) any Exceptional Amounts (each identified as a separate line item and detailed separately on an attached summary) agreed, or determined pursuant to the Dispute Resolution Agreement, to be payable during such Payment Period in accordance with clause 18.11 (*Payment*), provided that the inclusion of an Exceptional Amount in such ISC Invoice shall be subject to the payee having materially complied with any conditions agreed by the parties as being requirements for such payment.

### **Payment**

18.11 On each Payment Date all positive amounts shown on the ISC Invoice submitted during the Payment Period shall be due and payable by LUL to Infraco.

18.12 All payments made by LUL to Infraco under this clause shall be made to the Payment Account of Infraco.

18.13 On each Payment Date, if the ISC Adjustment Statement or an Interim ISC Adjustment Statement gives rise to a negative payment of ISC, no ISC will be payable to Infraco by LUL on the relevant Payment Date and the negative amount (expressed as a positive) shall be due and payable by Infraco to LUL as a refund of ISC previously paid.

18.14 Not used

### **ISC Invoice upon Expiry of the Contract**

18.15 Following the Expiry Date in accordance with the provisions of clause 42 (*Expiry*), Infraco shall, within a reasonable time, render an ISC Invoice for the ISC due in respect of the period commencing on the date following the end of the relevant preceding

Payment Period and ending on the Expiry Date for which the Payment Date is twenty-eight (28) days after the date of the ISC Invoice and shall issue ISC Adjustment Statements in relation to the preceding Payment Periods in accordance with the provisions of this clause 18 to show any adjustments to the ISC for the four (4) Payment Periods prior to the Expiry Date. ISC Invoices reflecting the four (4) ISC Adjustment Statements issued pursuant to this clause 18.15 shall be issued to LUL by Infraco but:

- (a) shall not include an amount reflecting a proportion of the annual Baseline ISC; and
- (b) shall deduct the amount, if any, of the Expiry Assets Payment (to the extent not already paid pursuant to clause 42.3 (*Payment on Expiry*)).

### **Overpaid and Wrongfully Paid Amounts**

18.16 Either party may recover from the other any amount overpaid, wrongfully paid or allowed howsoever such payment or allowance may have arisen (including, but not limited to, mistake of law or of fact) provided that such repayment is claimed no later than three years after the end of the Payment Period in which the original payment was made, save where such overpayment, wrongful payment or allowance arose through fraud. Interest at the Applicable Rate shall accrue on any such amount from the date on which such amount was paid up to and including the date on which such amount is repaid (both before and after judgement).

### **Interest on Late Payments**

18.17 If an amount shown on an ISC Invoice (whether payable by LUL or by Infraco in accordance with clause 18.13) is not paid on or before the corresponding Payment Date, interest will accrue on that amount at the Applicable Rate for the period from the relevant Payment Date to the date on which such amount is actually paid by LUL or Infraco (as the case may be) save to the extent late payment of any amount by LUL arises from any failure by Infraco to comply with its obligations under this clause 18.

### **Payment Deductions**

18.18 Subject to clause 18.19, LUL shall not make any abatements, deductions or set off from any payments due under the Contract except sums which:

- (a) the parties have agreed LUL is entitled to deduct or abate;
- (b) have been determined under the Dispute Resolution Agreement to be due from Infraco to LUL; or
- (c) are specifically permitted to be deducted or abated pursuant to the terms of the Contract.

18.19 All costs, charges, expenses, liabilities or other amounts incurred by LUL under the NLTSC Step-in Agreements in the discharge of Infraco's obligations under the Northern Line Train Service Contracts may be set off or otherwise deducted by LUL from any moneys due to Infraco under this Contract or applied towards satisfaction of any of LUL's liabilities to Infraco under the Contract.

### Amounts payable to Key Sub-Contractors

18.20 Where LUL has served notice in writing on a Key Sub-Contractor to accept instructions from LUL or its appointee in respect of the carrying out and completion of the Services under a Direct Agreement and LUL or its appointee pays any amounts which are due and payable or which will subsequently become due and payable under the relevant Key Sub-Contract to the Key Sub-Contractor, any such payment shall be treated as having been paid by LUL on behalf of Infraco and an amount equal to such amounts may, in order that LUL is reimbursed by Infraco for such payment, be deducted by LUL from the ISC then payable by LUL to Infraco.

### HMRI Charges

18.21 With effect from the Transfer Date, Infraco shall be liable for such proportion of charges incurred by Her Majesty's Railways Inspectorate and allocated to Infraco as the same shall be set out in invoices received from time to time by LUL from the Health & Safety Executive pursuant to the Health & Safety (Fees) (Amendment) Regulations 2001. Any sums represented by such charges shall be deducted from any payments due from LUL to Infraco under the Contract.

### Transition Provisions

18.22 Notwithstanding the provisions of this clause 18 and the actual level of performance by Infraco prior to the Transfer Date as measured under the Performance Measurement Code and calculated in accordance with Schedule 4.1 (*Performance Payment Mechanism*), performance during such Payment Periods shall be deemed to have met Benchmark level for all categories of measurement and the ISC relative to such Payment Periods after the Transfer Date shall be calculated on that basis.

18.23 Notwithstanding clause 18.22, but subject to clause 18.24 and save to the extent contrary provision is made in the Contract, if either:

- (a) the levels of performance by Infraco prior to the Transfer Date, as measured pursuant to the Performance Measurement Code, were such that LUL would be entitled to make or enforce a claim against Infraco or otherwise pursue remedies against Infraco under the Contract in respect of such performance or the events or circumstances giving rise thereto (collectively such performance, events or circumstances being the **Events**); or
- (b) LUL has, in respect of the period prior to the Transfer Date, any other claim against Infraco arising out of or in connection with any breach of any of the Transaction Documents or otherwise howsoever arising (other than amounts properly due and payable by Infraco to LUL and which are to be taken into account in the Completion Accounts),

LUL hereby waives and shall not make or enforce any claim against Infraco or otherwise exercise its rights to pursue any remedies under the Contract in relation to the Events or any other claim referred to in paragraph (b) above, and no Service Points shall accrue in respect of the Events.

18.24 For the purposes of establishing the occurrence of, calculating the duration of or otherwise determining the consequence of Events which have not been rectified at midnight on the Transfer Date under the terms of the Contract, such Events shall be

deemed to have occurred at midnight on the Transfer Date (and not at any time prior to that time) and the provisions of the Performance Measurement Code shall apply to the Events on the basis that they shall be deemed to have first occurred, and the relative performance shall be deemed to have first arisen, at midnight on the Transfer Date (and not at any time prior to that time).

### **Invoicing for Other Agreements**

18.25 Invoicing in relation to Non-ISC Services shall be undertaken in accordance with Schedule 5.7 (*Non-ISC Invoicing*).

### **Interim Payment Terms**

18.26

- (a) On the first day of the first Contract Year Infraco may submit to LUL a First Special Invoice for such amount as may be required by Infraco to enable it to meet its costs falling due for payment during the first Payment Period of the first Contract Year, provided such amount may not exceed £50 million (fifty million pounds).
- (b) On the fifteenth day of the last Payment Period of the first Contract Year Infraco may submit to LUL a Second Special Invoice for such amount as may be required by Infraco to enable it to meet its costs falling due for payment during the first Payment Period of the second Contract Year, provided such amount may not exceed £50 million (fifty million pounds).
- (c) References in this clause 18.26, and in clause 18.28 to the payment of "such amount as may be required" by Infraco to enable it to meet its costs falling due for payment within a Payment Period shall be treated as references to such amount required taking into account the projected receipt of the Baseline ISC adjusted by reference to those matters in clause 18.10(a) and (b) and also as adjusted by reference to Disregarded Exceptional Amounts (as defined below).

18.27

- (a) The amount shown on the First Special Invoice shall become due and payable by LUL to Infraco on 6 January 2003 and shall be paid in accordance with clause 18.12.
- (b) On the seventh day of the first Payment Period of the second Contract Year the amount shown on the Second Special Invoice shall become due and payable by LUL to Infraco and shall be paid in accordance with clause 18.12.

18.28 In respect of any ISC Invoice submitted by Infraco during the second Contract Year, Infraco may include as an Exceptional Amount:

- (a) the figure applicable to that Payment Period as set out in Schedule 1.12 (*Anticipated Interim Payment Amounts*); and
- (b) such additional amount as may be required by Infraco to enable it to meet its costs falling due for payment prior to the Payment Date in the Payment Period next following the Payment Period in which such ISC Invoice is submitted,

provided that in any event

- (c) the aggregate of:
- (i) the amounts in (a) and (b) above proposed for such ISC Invoice less any amount included in (b) above which has subsequently been included in an ISC Invoice as an Exceptional Amount (under paragraphs (a) - (mm) of the definition of that term (a **Disregarded Exceptional Amount**) payable by LUL to Infraco;
  - (ii) all Interim Payment Amounts included in any prior ISC Invoice or any Special Invoice less any Disregarded Exceptional Amounts included in such ISC Invoices;
  - (iii) the aggregate of the PAISC for all Payment Periods up to but not including the Payment Period in which such ISC Invoice is submitted; and
  - (iv) the Baseline ISC for the Payment Period in which such ISC Invoice is submitted

may not exceed the aggregate of the Baseline ISC for all Payment Periods in the second Contract Year.

18.29 In respect of the ISC Invoice submitted by Infraco subsequent to the Funding Date (and all subsequent invoices until fully recovered by LUL) Infraco shall include as a deduction from such ISC Invoice the Total Interim Payment Amount or if less, such portion of the Total Interim Repayment Amount as would not cause the total of the ISC Invoice to become negative and to the extent Infraco fails to include such amounts, such amounts shall be deemed to be amounts to which clause 18.18(a) applies.

18.30 Infraco shall procure that prior to the Funding Date, all TA Certificates, Progress Reports and TA Reports (as those terms are defined in the Common Terms Agreement (as defined below)) provided to the Funders under the terms of the Common Terms Agreement (as that agreement is defined in the version of the Stand Still Agreement entered in on or about the Transfer Date) shall be provided to LUL either forthwith upon such documents being provided to the Funders (where the documents are to be provided by Infraco) or as soon as reasonably practicable after receipt of any such document by Infraco (where Infraco does not create the document) provided that any matter referred to in clause 9.6.1(c) of the Common Terms Agreement may be omitted from the copy of a TA Report provided to LUL.

18.31 The terms which are defined in the Share Purchase Agreement which are referred to in this clause 18.31 shall have the meaning given to them by the Share Purchase Agreement. If, notwithstanding that the process of agreeing Completion Accounts referred to in clause 4 of the Share Purchase Agreement may not have been completed, the parties agree that if and as soon as there is an undisputed amount by which the Working Capital Debtor Adjustment exceeds £65 million (sixty-five million pounds) then the provisions of clause 4.12 of the Share Purchase Agreement shall immediately apply to such excess as if it were the Working Capital Debtor Adjustment. If any payments shall have been made pursuant to this clause 18.31 then credit shall be given for such payments when the Working Capital Debtor Adjustment is finally agreed and payment is made pursuant to the terms of the Share Purchase Agreement.

## SCHEDULE 2

### CLAUSE 31 OF THE AMENDED AND RESTATED SERVICE CONTRACT

#### CLAUSE 31 - PROTECTION OF ASSETS

31.1 The parties shall comply with Schedule 5.9 (*Key System Assets*).

#### **Handover to Successor Infraco**

31.2 Infraco shall (other than to the extent reasonably prevented by a Force Majeure Event and/or any industrial action) maintain and manage the business of providing the Services:

- (a) so that a Successor Infraco or LUL would be reasonably able to take over and carry on without undue disruption or difficulty the business of providing the Services immediately at any time (and in any event, Infraco shall use all reasonable endeavours to ensure that such Successor Infraco or LUL would have immediate access to all Infraco Staff (which for the purposes of this clause shall include staff seconded or outsourced to other organisations) and Key System Assets for such purpose);
- (b) on the basis that (to the extent reasonably practicable) such business, including all persons involved in providing the Services, will be transferred in the manner contemplated under the Contract and as a going concern on the Expiry Date or Contract Disposal Date, as the case may be to, and continue immediately thereafter by, LUL or a Successor Infraco; and
- (c) to ensure that, if two or more Infracos are at any one time Affiliates, the separate businesses of the Infracos under their respective PPP Contracts, are kept sufficiently separate so that such businesses could be transferred in the manner contemplated under the Contract as a going concern on the Expiry Date or Contract Disposal Date as the case may be to, and continued immediately thereafter by, LUL or separate Successor Infracos.

31.3 Without prejudice to clause 31.2, Infraco shall employ or otherwise engage an appropriate number of staff (having sufficient skills, qualification and experience) to ensure compliance with each of the requirements of clause 31.2 and to ensure the direct employment of or otherwise engage a sufficient number of qualified staff to carry out or supervise and manage the carrying out of the technical, engineering, maintenance, inspection, contract management, financial and other key functions carried on by Infraco at the Transfer Date. The foregoing shall not be construed so as to limit Infraco's right to modify its workforce during the term of the Contract to take into account changed asset condition, technology and/or contract scope.

#### **Positive Infraco Undertakings**

31.4 Infraco undertakes to LUL that:

- (a) **corporate governance:** it will at all times conduct its corporate activities in accordance with best practice of corporate governance prevailing from time to time and, in particular, maintain best practice concerning conflicts of interest in respect of placing and managing contracts with shareholders or their affiliated entities, provided that LUL hereby agrees that Infraco shall not be in breach of this clause as a result of the arrangements in the articles of association of

Infraco, the Shareholders Agreement concerning Infraco and Tube Lines (Holdings) Limited, the Secondment Agreements and contractual arrangements with Infraco's Funders and the Mezzanine Funders, in each case in the form in place at the Transfer Date (or as subsequently acknowledged by LUL, from time to time, to fall within this proviso). LUL agrees that the application of such best practice shall be interpreted within the framework and context of all the arrangements described in the preceding sentence;

- (b) **preparation of accounts:** it will prepare the financial statements referred to in paragraph (c) on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of the results of its operations and those of its subsidiaries for the period in question and the state of its affairs and those of its subsidiaries as at the date to which the financial statements are made up and shall accurately disclose or reserve against all the liabilities (actual or contingent) of Infraco and its subsidiaries; and
- (c) **information:** it will deliver to LUL:
- (i) as soon as they become available (and in any event within ninety (90) days of the end of each of its financial periods) copies of its audited financial statements for that period and the audited consolidated financial statements of Infraco and its subsidiaries both of which shall contain an income statement and a balance sheet and a cash flow statement and be audited and certified without qualification by a firm of independent accountants of recognised international standing;
  - (ii) as soon as they become available (and in any event within sixty (60) days of the end of each of its financial half-years) copies of its unaudited financial statements for that half-year and the unaudited consolidated financial statements of Infraco and its subsidiaries which shall contain an income statement and a balance sheet and a cash flow statement;
  - (iii) promptly, all notices or other documents despatched by Infraco to its shareholders (or any class thereof) pursuant to the memorandum and articles of association of Infraco or its creditors generally; and
  - (iv) as soon as they become available (and in any event within fourteen (14) days of the end of each Payment Period) copies of its periodic management accounts.
- (d) **The Stand Still Agreement and the Put Option Agreement:** if, at any time after the Transfer Date, any Funder provides Approved Debt or Approved Mezzanine Debt pursuant to paragraphs B or C of the definition of the Approved Debt and/or the Approved Mezzanine Debt respectively, Infraco shall procure that, prior to providing such financing, hedging or funding, such Funder enters into an agreement with LUL substantially in the form of each of the Put Option Agreement and the Stand Still Agreement (the **Proposed New Agreements**), provided that:
- (i) where the Funder provides financing, hedging or funding to a Finance Obligor (not being Infraco), the provisions of this clause 31.4(d) shall not apply in relation to the requirement to enter into an agreement with LUL substantially in the form of the Put Option Agreement to the extent that the Finance Obligor is a party to the Put Option Agreement or an

agreement with LUL substantially in the form of the Put Option Agreement;

- (ii) the provisions of this clause 31.4(d) shall not apply in relation to any such Funder if another Funder, acting as a trustee of a trust under which the first mentioned Funder is a beneficiary, is a party to the Put Option Agreement and the Stand Still Agreement or an agreement with LUL substantially in the form of each of the Put Option Agreement and the Stand Still Agreement in such trustee capacity; or
  - (iii) where a Funder transfers its interest in the Approved Debt and/or the Approved Mezzanine Debt to a transferee, the provisions of this clause 31.4(d) shall not apply to such transferee provided it is otherwise bound by the terms of the Stand Still Agreement or the Put Option Agreement or an agreement with LUL substantially in the form of each of the Stand Still Agreement or the Put Option Agreement in substitution for such Funder; and
  - (iv) LUL agrees that it shall enter into any Proposed New Agreement. To the extent that a failure by Infraco to procure any Funder to enter into a Proposed New Agreement results from a failure by LUL to comply with its obligations under this paragraph (iv), Infraco shall be deemed to be in compliance with the provisions of this clause 31.4(d).
- (e) **Changes to Infraco's funding:** where:
- (i) Infraco enters into one or more Funding Agreements in relation to additional or replacement Approved Debt and/or Approved Mezzanine Debt (in each case, pursuant to paragraphs A, B or C of the definition of Approved Debt and/or Approved Mezzanine Debt) ("**Further Debt**"), Infraco and LUL shall make such amendments to this Agreement and the Transaction Documents as are agreed by the parties and, where LUL is not a party, by LUL to be necessary or desirable to take account of any difference between the terms of any Funding Agreements for any Further Debt and the terms of the Funding Agreements for any Approved Debt and/or Approved Mezzanine Debt in existence at that time; and
  - (ii) Infraco enters into one or more Funding Agreements in relation to additional or replacement Approved Debt and/or Approved Mezzanine Debt (in each case, pursuant to paragraphs B or C (but not A) of the definition of Approved Debt and/or Approved Mezzanine Debt) ("**Further B/C Debt**") on terms which provide for the provision of such Further B/C Debt to a Finance Obligor other than Infraco (an "**Other Finance Obligor**"), Infraco and LUL shall enter into new or replacement agreements with such Other Finance Obligor in respect of cash standing to the credit of Debt Bank Accounts in the name of such Other Finance Obligor on terms which are the same as the LUL Charge and the LUL Deed of Priorities changed to the extent as may be agreed by the LUL and Infraco to be necessary or desirable to take account of any difference between the terms of any Funding Agreements for any Further B/C Debt and the terms of the Funding Agreements for any Approved Debt and/or Approved Mezzanine Debt in existence at that time. For the purpose of this clause, Debt Bank Accounts means any account of an Other Finance Obligor, other than, (1) where Tube Lines (Holdings) Limited ("**TLH**") is an Other Finance Obligor, accounts established for the receipt and onward distribution to the shareholders of TLH of distributions from Infraco which Infraco may lawfully make ("**Shareholder Distributions**") and into which no other amounts are to be deposited other than Shareholder Distributions for onward distribution as describe above and (2)

accounts with any Other Finance Obligor that would fall within the definition of Excluded Accounts in the LUL Charge.

- (f) **Schedule 1.13:** It will comply with its obligations under Schedule 1.13.

### **Negative Infraco undertakings**

31.5 Infraco undertakes to LUL that it will not, and will procure that no subsidiaries of Infraco will:

- (a) make any loans;
- (b) grant any credit or provide any other financial accommodation; or
- (c) give any guarantees for the benefit of any person,

which, in aggregate, exceed £5 million at any time, provided that this provision shall not apply to Infraco's ability to grant season ticket loans to its Employees.

### **Refinancing**

31.5A Infraco agrees that it will not undertake any Refinancing within the first eleven (11) months following the Transfer Date, unless such Refinancing is approved by LUL.

31.6 In the event of a Refinancing, the following provisions shall apply:

- (a) In relation to an Initial Refinancing only, notwithstanding the proviso following the end of paragraph C of the definition of Approved Debt, the Funding Agreements entered into to implement the Initial Refinancing shall be deemed approved by LUL, except to the extent that such Funding Agreements increase LUL's liability under the terms of the Transaction Documents (when compared to the Funding Agreements in place immediately prior to such Initial Refinancing), provided that amounts determined in accordance with paragraph (b)(ii) of the definition of Approved Debt shall include any spens redemption premia (on such terms as is market practice at the time of such Initial Refinancing) or swap breakage costs payable on redemption, on repayment or on default payable pursuant to the terms of any Funding Agreement relating to the Refinanced Debt even if the Funding Agreements relating to the Refinanced Debt have not been approved by LUL for the purposes of the definitions of Approved Debt and/or Approved Mezzanine Debt. To avoid doubt, the provisions of this clause 31.6(a) shall apply unless and to the extent any Funding Agreements are expressly approved by LUL for the purposes of the definitions of Approved Debt and/or Approved Mezzanine Debt (in which case the terms of such express approval shall prevail).
- (b) In relation to an Initial Refinancing only, Infraco shall procure that the non-financial terms of the Funding Agreements relating to the Refinanced Debt shall not cause any deterioration in LUL's position pursuant to the Transaction Documents, the Put Option Agreement or the Stand Still Agreement. For the avoidance of doubt, the events of default (howsoever defined) under any Funding Agreement relating to the Refinanced Debt shall not be materially more onerous than the events of default approved by LUL under the Funding Agreements relating to Approved Debt and/or Approved Mezzanine Debt (as the case may be) on the Transfer Date. To the extent that LUL shall expressly approve any such Funding Agreement relating to the Refinanced Debt, Infraco shall be deemed to have complied with its obligations under this clause.

- (c) In relation to an Initial Refinancing only and without prejudice to the generality of clause 31.4(d), Infraco and LUL shall, and Infraco shall procure that any Funders shall, enter into replacement Put Option Agreement(s) and Stand Still Agreement(s) in respect of the Refinanced Debt on the same terms as the Put Option Agreement and the Stand Still Agreement entered into on the Transfer Date, with such amendments only as are necessary or desirable to take account of any difference between the terms of the Funding Agreements entered into at the Transfer Date and the terms of the Funding Agreements relating to the Refinanced Debt.
- (d) LUL agrees that the following costs shall be taken into account (by way of deduction) before calculating any amounts accruing to Infraco as a result of an Initial Refinancing:
- (i) the amount of any legal costs and other transaction costs of the Initial Refinancing, prepayment fees on the Approved Mezzanine Debt and any swap breakage costs, prepayment fees and any other fees and expenses of Infraco incurred under the Funding Agreements as approved by LUL for the purposes of the definition of Approved Debt and Approved Mezzanine Debt;
  - (ii) a refinancing fee which is to be calculated at 0.625% of the principal amount of the Refinanced Debt; and
  - (iii) the amount of any legal costs and other transaction costs of the Initial Refinancing incurred by or on behalf of LUL, up to a maximum of £2 million (two million pounds) (excluding VAT);
- (dA) Infraco and LUL shall share any Benefit accruing as a result of any Refinancing in accordance with paragraphs (e) to (q) below.
- (e) In relation to an Initial Refinancing only, LUL shall be entitled to:
- (i) an amount of Upfront Benefit equal to "L<sub>1</sub>" calculated in accordance with paragraph (f) below as set out in paragraph (i) below; and
  - (ii) an amount of Over Time Benefit equal to "L<sub>2</sub>" calculated in accordance with paragraph (h) below as set out in paragraph (k) below; and
- (f) Any Upfront Benefit payable to LUL, "L<sub>1</sub>" shall (subject to paragraphs (g)(iv) and (v) below) be calculated as:
- $$L_1 = 1.5 \times R; \text{ and}$$
- where
- R = the Reference Benefit, calculated in accordance with paragraph (g) below.
- (g) The "Reference Benefit", "R" shall be the amount (not less than zero) that is agreed or determined to be the least of, each as at the date of the Refinancing (and, where applicable, on any future calculation of L<sub>1</sub> or L<sub>3</sub>):
- (i) the aggregate of (aa) the future increment to distributable reserves ("p") arising as a result of the Refinancing and (bb) the outstanding balance on the shareholder loans, save to the extent not repayable under the Funding Documents; or

- (ii) the cash available within any member of the Infraco Group (or, if not within that member of the Infraco Group, the cash available for drawdown by that member of the Infraco Group from loan facilities) for distribution or cash otherwise available for distribution, in each case as a result of the Refinancing; or
- (iii) the aggregate amount of Benefit,

provided that:

- (iv) if the aggregate of  $L_1 + R$  (or, where applicable,  $L_3 + R$ ) is greater than the amount calculated at (ii) above ("C"), then both  $L_1$  (or, where applicable,  $L_3$ ) and  $R$  shall be multiplied by  $XX$  where:

$$XX = \frac{C}{L_n + R}; \text{ and}$$

$n = 1$  in the case of  $L_1$  and  $3$  in the case of  $L_3$

- (v) if the aggregate of  $L_1(1-t)+R$  (or, where applicable,  $L_3(1-t)+R$ ) is greater than the amount calculated at (iii) above ("D"), then both  $L_1$  (or, where applicable,  $L_3$ ) and  $R$  shall be multiplied by  $ZZ$  where:

$$ZZ = \frac{D}{L_n(1-t) + R};$$

and

$n = 1$  in the case of  $L_1$  and  $3$  in the case of  $L_3$

$t =$  applicable tax rate as at the date of the Refinancing (expressed as a decimal)

If a reduction might be made under both (iv) and (v), then the reduction shall be made by whichever of  $XX$  and  $ZZ$  is the lesser.

- (h) The Over Time Benefit payable to LUL,  $L_2$ , shall be the amount by which the mezzanine interest scheduled to be paid by TLL after 30 June 2010 as set out in tables 2.0 and 2.1 in Annex 3 to Schedule 1.9 exceeds the interest paid by TLL in relation to the Term C Facility and the Term D Facility, as those terms are defined in the definition of Mezzanine Funders.
- (i) Infraco agrees that it will calculate  $L_1$  on the date of the Initial Refinancing. The calculation of  $L_1$  shall be subject to paragraph (m) below. The amount of  $L_1$  or  $L_{1 \text{ reduced}}$  (as the case may be) shall be available to LUL by way of a reduction in the ISC, included on an Interim ISC Adjustment Statement which LUL and Infraco agree will be issued by Infraco pursuant to paragraph 18.4(c) immediately following the calculation of  $L_1$ .
- (j) Infraco agrees that it will calculate  $R$  on the date of the Initial Refinancing. The amount of Benefit which accrues to Infraco (" $S_1$ ") shall be equal to  $R$  (as reduced in accordance with proviso to paragraph (g) above).

- (k) In relation to the Initial Refinancing, Infraco agrees that it will calculate  $L_2$  on 30 September 2010 and thereafter, six monthly (on each year-end or half year-end, or at such other interval as may be agreed by LUL, acting reasonably). The amount of  $L_2$  shall be available to LUL by way of a reduction in the ISC, included on an Interim ISC Adjustment Statement which LUL and Infraco agree will be issued by Infraco pursuant to paragraph 18.4(c) immediately following the interest payment date on which  $L_2$  is calculated.
- (l) Without prejudice to the specific provisions of paragraph (o) below, LUL shall act reasonably in considering whether to give its consent to Infraco releasing any uncalled equity commitments or undrawn Shareholder Subordinated Debt commitment or making any distribution of equity or payment or repayment in respect of Shareholder Subordinated Debt where such consent is required in order that Infraco can distribute  $S_1$  or  $S_3$  (as applicable, as described in this clause 31.6).
- (m) If and to the extent that it is agreed or determined that the Special Shareholder has withheld its consent to the payment of some or all of  $S_1$  or  $S_3$  (as applicable) by Infraco in circumstances where Infraco is lawfully entitled to make a payment of an amount equal to or greater than  $S_1$  or  $S_3$  (whether by way of lawful distributions or otherwise), then the amount payable to LUL shall be reduced (" $L_1$  reduced"), so that:

$$L_{n \text{ reduced}} = L_n \frac{(S_n \text{ released})}{S_n};$$

where:

$S_n \text{ released} =$  the amount of payment in fact permitted by the Special Shareholder

$n = 1$  in the case of an Initial Refinancing and 3 in the case of any Refinancing other than and Initial Refinancing

- (n) The confidentiality provisions contained in clause 48 of this Contract shall be amended to provide that notwithstanding the provisions of clause 48, Infraco shall be entitled to disclose any of the Transaction Documents, Commercially Sensitive Information or other confidential information (the "Information") in connection with a Refinancing:
- (i) to any actual or potential investor, purchaser, credit rating agency, placement agent, trustee, underwriter, arranger or provider of a surety, guarantee or other credit enhancement (whether directly or indirectly) or of a liquidity facility in connection with such Refinancing;
  - (ii) to any person who is a party to any of the documentation in relation to such Refinancing;
  - (iii) to any directors, officers, shareholders, representatives, agents and employees, or to financial, legal, accounting and other professional advisers, of any of the parties referred to in subparagraphs (i) and (ii) above; and
  - (iv) (notwithstanding the provisions of clause 57.1D (d) of the Contract) to any listing authority or securities exchange, and in any offering circular

and/or investor presentation, in respect of securities to be issued in relation to such Refinancing;

provided that each such person in the case of subparagraph (i) and (ii) above is informed of the confidential nature of such Information and agrees to maintain the confidentiality of such Information under a duty of confidentiality in terms substantially similar to those contained in this clause and clause 48 or otherwise in accordance with such party's standard confidentiality agreements.

- (o) To the extent that Infraco is lawfully entitled to make a payment of an amount equal to or greater than  $S_1$  (whether by way of lawful distributions or otherwise) then, in relation to the amount of  $S_1$  that is calculated on the date of the Initial Refinancing, LUL, acting in its capacity as the Special Shareholder, hereby grants its consent to the payment of some or all of  $S_1$  in accordance with the other provisions of this clause 31.6 by Infraco at any time or after the date of the Initial Refinancing and:
- (i) LUL shall sign or take reasonable steps to procure the signature of all further documents and do all other things as are necessary or desirable to enable Infraco to make such distribution; and
- (ii) any amount so calculated and distributed shall be ignored for the purposes of the calculation of any amount pursuant to Article 6A of Infraco's articles of association and/or paragraph 1.10 of schedule 1.9 to the Service Contract (as such provisions may be amended or replaced from time to time).
- (p) In relation to a Refinancing other than the Initial Refinancing, LUL shall be entitled to an amount of Benefit " $L_3$ " accruing from that Refinancing equal to  $1.5 \times R$ , where  $R$  is calculated in accordance with paragraph (g) above.  $L_3$  shall be payable in accordance with paragraph (q) below.
- (q) Infraco agrees that it will calculate  $L_3$  and  $R$  on the date of the Refinancing and thereafter, six monthly (on each year-end or half year-end, or at such other interval as may be agreed by LUL, acting reasonably). The calculation of  $L_3$  shall be subject to paragraph (m). The amount of  $L_3$  or  $L_{3 \text{ reduced}}$  (as the case may be) shall be available to LUL by way of a reduction in the ISC, included on an Interim ISC Adjustment Statement which LUL and Infraco will be issued by Infraco pursuant to paragraph 18.4(c) immediately following the calculation of  $L_3$ . The amount of Benefit which accrues to Infraco (" $S_3$ ") (after payment of  $L_3$  (as reduced in accordance with the proviso at paragraph (g) above) shall be equal to  $R$ , as reduced in accordance with the proviso at paragraph (g) above).

For the purpose of clauses 31.5A and 31.6:

**Benefit** means (without double counting) the present value of the incremental post tax cash flows accruing to the Infraco Group taken as a whole as a result of a Refinancing at any time and from time to time during the Contract Period, evaluated at the post tax equity rate of return of 19.9% and taking into account the effect of any amounts previously released to the Shareholder and any amounts previously paid to LUL under the provisions of clause 31.6 as a result of the same Refinancing but excluding any cash flows accruing to Infraco that are attributable to Infraco's prior operational (rather than financial) efficiency gains.

**Initial Debt** means all amounts outstanding from any Finance Obligor to the Senior Funders and the Mezzanine Funders pursuant to the terms of Funding Agreements which are in place at the Transfer Date;

**Initial Refinancing** means the initial Refinancing of the entire amount (and not part only) of the Approved Mezzanine Debt and all or substantially all of the Approved Debt made available to Infraco as at the Transfer Date, provided that (i) the Initial Refinancing may comprise one or more Refinancings from time to time (each one being an Initial Refinancing for the purpose of this clause 31.6 and which in the aggregate constitute a refinancing of all the Approved Mezzanine Debt and all or substantially all of the Approved Debt as at the Transfer Date) and (ii) such Refinancings take place before the end of the first Review Period;

**Over Time Benefit** means the Benefit accruing after the first Periodic Review as a result of the Initial Refinancing, calculated in accordance with paragraph (h) and available to LUL in accordance with paragraph (k);

**Refinanced Debt** means all amounts outstanding from any Finance Obligor to the Senior Funders and the Mezzanine Funders pursuant to the terms of Funding Agreements which are in place following an Initial Refinancing;

**Refinancing** means a change to the equity or debt financing provided, or committed to be provided (including changes in the terms of provision) to the Infraco on or after the Transfer Date;

**Upfront Benefit** means the Benefit accruing at the date of the Initial Refinancing, calculated in accordance with paragraph (f).

**SCHEDULE 3**

**CLAUSE 33 OF THE AMENDED AND RESTATED SERVICE CONTRACT**

**CLAUSE 33 CHANGE OF CONTROL OF LUL**

33.1 For the purposes of this clause 33 a **Change of Control of LUL** means LUL (which, for the purposes of this clause 33 includes reference to any other person in whom all or any of the rights and obligations in the Transaction Documents, the Stand Still Agreement and the Put Option Agreement expressed to be rights and obligations of LUL are vested for the time being) ceasing to be owned and controlled by or on behalf of one or more of the following:

- (a) a Minister of the Crown; or
- (b) London Regional Transport as constituted (which for these purposes shall include the financial regime applicable thereto, or a comparable financial regime) under the London Regional Transport Act 1984 as at the Transfer Date or any public or statutory corporation or limited liability company which is owned and controlled directly or indirectly by a Minister of the Crown (and subject to a financial regime comparable to that applicable to London Regional Transport as at the Transfer Date); or
- (c) the Mayor of London as the same is constituted under the GLA Act; or
- (d) TfL as constituted (which for these purposes shall include the financial regime applicable thereto, or a comparable financial regime) under the GLA Act as at the Transfer Date or any public or statutory corporation or limited liability company which is owned and controlled directly or indirectly by the Mayor of London (and subject to a financial regime comparable to that applicable to functional bodies of the Greater London Authority as at the Transfer Date),

provided that clauses 33.3 to 33.5 or 33.5A shall nevertheless apply where there is a transfer of LUL within the scope of paragraph (b), (c) or (d) above in circumstances where the relevant Minister of the Crown has not issued to the Funders and the then shareholders of Infracore a letter of comfort providing a level of comfort comparable in all material respects to the comfort letter issued to the Funders, Mezzanine Funders and Initial Shareholders at or around the Transfer Date by the Secretary of State for Transport.

33.2 For the purposes of this clause 33 the expression **owned and controlled** shall mean possessing:

- (a) in relation to a body corporate having a share capital, ninety (90) per cent. or more of the issued equity share capital of that body having voting power exercisable at general meetings of that body; and
- (b) in relation to any other body (whether or not corporate), the power to appoint or remove all or substantially all of the members of the Board of that body and the term **Board** shall mean the persons who have the management and control of the relevant entity and similar powers and responsibilities to those of directors of a body corporate.

33.2A For the purposes of this clause 33 a **Guarantee Transfer** means an event whereby the obligations pursuant to the Guarantee and/or the obligations expressed to be the obligations of Transport for London under the Stand Still Agreement and/or the Put Option Agreement (the **TfL Obligations**) cease to be obligations of:

- (a) a Minister of the Crown; or
- (b) London Regional Transport as constituted (which for these purposes shall include the financial regime applicable thereto, or a comparable financial regime) under the London Regional Transport Act 1984 as at the Transfer Date or any public or statutory corporation which is owned and controlled by a Minister of the Crown (and subject to a financial regime comparable to that applicable to London Regional Transport as at the Transfer Date); or
- (c) TfL as constituted (which for these purposes shall include the financial regime applicable thereto, or a comparable financial regime) under the GLA Act as at the Transfer Date,

provided that clauses 33.3 to 33.5A shall nevertheless apply where the obligations pursuant to the Guarantee and/or the TfL Obligations are the obligations of a person referred to in paragraph (b) or (c) above in circumstances where the relevant Minister of the Crown has not issued to the Funders and the then shareholders a letter of comfort providing a level of comfort comparable in all material respects to the comfort letter issued to the Funders and Initial Shareholders at or around the Transfer Date.

33.3 Subject to clause 33.3A, LUL shall procure with effect from at least thirty (30) days prior to a Change of Control of LUL or a Guarantee Transfer that LUL's payment obligations under the Transaction Documents, the Stand Still Agreement, the Put Option Agreement and the Share Purchase Agreement are supported by a letter or letters of credit from Qualifying Financial Institutions on terms (including terms as to amount and drawings on such letter of credit) no less favourable to Infracore or the Funders (as applicable) than the obligations under the Guarantee or the TfL Obligations respectively, provided that:

- (a) the aggregate of the face amounts of such letter or letters of credit is at least equal to the Potential Exposure applicable to the relevant Contract Year;
- (b) the face value of the letter or letters of credit issued by any one Qualifying Financial Institution pursuant to this clause 33.3 does not exceed £250 million; and
- (c) demand may be made under any such letter of credit for the full face value if it is not replaced with a replacement letter or letters of credit which satisfy the requirements of this clause 33.3 (and clause 33.3A if applicable) at least thirty (30) days before its expiry date.

33.3A To the extent that, on the date that LUL is required to procure any letter or letters of credit pursuant to clause 33.3 (including in relation to any replacement letter or letters of credit), all or any part of the Potential Exposure at the time comprises amounts which:

- (i) would be payable to Infracore in the event of a Mandatory Sale and advanced or otherwise due, owing or incurred (whether actually or contingently) under the Term A Facility, the Standby and Safety Change

Facilities, the Northern Line L/C Facility and any fees, costs and expenses incurred (including commitment fees and other Liabilities due and payable under the Forward Note Purchase Agreement and the Issuer Standby, Safety Change and LC Facility Agreement) by Infraco pursuant to clause 6.8 of an Issuer/Borrower Facility Agreement (the "**IBFA**") dated on or about the date of the Second Supplemental Agreement between Infraco, Tube Lines (Finance) PLC and the Law Debenture Trust Corporation plc (each such term as defined in the IBFA); or

- (ii) could become payable to the Senior Funders pursuant to the Put Option Agreement, such amounts being advanced or otherwise due, owing or incurred (whether actually or contingently) under the Term A Facility, the Standby and Safety Change Facilities, the Northern Line L/C Facility and any fees, costs and expenses incurred (including commitment fees and other Liabilities due and payable under the Forward Note Purchase Agreement and the Issuer Standby, Safety Change and LC Facility Agreement) by Infraco pursuant to clause 6.8 of the IBFA;

(any such proportion of the Potential Exposure being referred to as the "**Municipal Backed Potential Exposure**"), LUL shall ensure that the letter or letters of credit that are provided pursuant to and in accordance with clause 33.3 include one or more letters of credit (in aggregate amounts equal to the Municipal Backed Potential Exposure) provided by: (i) one or more Special Qualifying Financial Institutions; or (ii) by a Qualifying Financial Institution which has in place with a Special Qualifying Financial Institution, a direct, explicit, unconditional and irrevocable guarantee for the benefit of the beneficiary of the letter of credit for the full amount of the letter of credit being provided by that Qualifying Financial Institution; or (iii) by a Qualifying Financial Institution which has in place with a Special Qualifying Financial Institution, credit support (other than as specified in (ii) above) for the full amount of the letter of credit being provided by that Qualifying Financial Institution in substance and form approved: (aa) by DEPFA BANK plc ("**DEPFA**") but only while it (or, if relevant, its subsidiary) continues to be owed any Municipal Backed Potential Exposure; or, (bb) after DEPFA (or, if relevant, its subsidiary) ceases to be owed any Municipal Backed Potential Exposure, by any transferee of such sums originally owed to DEPFA (or, if relevant, its subsidiary) in respect of Municipal Backed Potential Exposure and which transferee is subject to the same requirement as applies to DEPFA (or if relevant, its subsidiary) as a result of the Irish Asset Covered Securities Act 2001 (the "**ACS Act**").

For the purposes of this clause 33.3A, "**Special Qualifying Financial Institutions**" shall mean:

- (a) where any Funder who is owed sums in respect of the Municipal Backed Potential Exposure issues debt in accordance with the ACS Act, any entity whose financial obligations in respect of money borrowed or raised by such entity (i) would possess a risk weighting of 20% or less for the purposes of the Codified Banking Directive and would qualify at the relevant time as a public credit asset which may be fully included in a cover assets pool for the purposes of the ACS Act and (ii) would not, when aggregated with any other obligations of such entity held by such Funder at such time exceed the regulatory capital single exposure limits that apply to such Funder at that time; provided that the requirement specified in (ii) shall not apply to at least

one entity, being Kreditanstalt für Wiederaufbau ("**KfW**"), or such other or further entity or entities notified by such Funder to LUL; or

- (b) where any Funder who is owed sums in respect of the Municipal Backed Potential Exposure issues debt in accordance with the ACS Act, any entity which is otherwise approved:
- (i) by DEPFA BANK plc ("**DEPFA**") but only while it (or, if relevant, its subsidiary) continues to be owed any Municipal Backed Potential Exposure; or,
  - (ii) after DEPFA (or, if relevant, its subsidiary) ceases to be owed any Municipal Backed Potential Exposure, by any transferee of such sums originally owed to DEPFA (or, if relevant, its subsidiary) in respect of Municipal Backed Potential Exposure and which transferee is subject to the same requirement as applies to DEPFA (or, if relevant, its subsidiary) as a result of the ACS Act,

in either case such approval not to be unreasonably withheld; or

- (c) where any Funder who is owed sums in respect of the Municipal Backed Potential Exposure no longer issues debt in accordance with the ACS Act, a Qualifying Financial Institution who meets such other risk weighting or credit risk requirements that apply to DEPFA (or, if relevant, its subsidiary) (but only while it (or, if relevant, its subsidiary) continues to be owed any Municipal Backed Potential Exposure) or (after DEPFA (or, if relevant, its subsidiary) ceases to be owed any Municipal Backed Potential Exposure) any transferee of such sums originally owed to DEPFA (or, if relevant, its subsidiary) in respect of Municipal Backed Potential Exposure and which requirements would have been met by TfL,

provided the requirements of paragraph 33.3(b) shall not apply to any letter of credit to be provided pursuant to this clause 33.3A, but 33.3(c) shall apply to any letter of credit provided pursuant to this Clause 33.3A. For the purposes of paragraphs (a), (b) and (c) above, the defined term "Funders" means:

- (1) in respect of the Class A-1 Notes, the Class A-1 Noteholders;
- (2) in respect of the Class A-2C Notes, the Class A-2C Noteholders; and
- (3) in respect of the Issuer Standby, Safety Change and L/C Facility Agreement, each of the Standby Facility Lenders, each of the Safety Change Facility Lenders and the Issuer L/C Lenders,

each as defined in the Master Transaction Deed entered into by Infraco and others on or about the date of a Second Supplemental Agreement made between Infraco and LUL.

33.3B If at any time, the Senior Funders notify LUL in writing that they no longer regard any financial institution as being a Special Qualifying Financial Institution for the purposes of clause 33.3A, LUL shall within fourteen (14) days of such notice procure that

any letter or letters of credit provided by that institution shall be replaced with a replacement letter or letters of credit from another Special Qualifying Financial Institution. Any such replacement letter or letters of credit shall be provided on terms no less favourable to Infraco or the Funders (as applicable) than the obligations under the Guarantee or TfL Obligations respectively.

33.4 LUL shall give to Infraco at least six (6) months' notice prior to the date on which LUL reasonably believes a Change of Control of LUL or a Guarantee Transfer is likely to occur and shall specify in reasonable detail the steps intended to be taken to procure compliance with clauses 33.3 and 33.3A.

33.5 If at any time following a Change of Control of LUL or a Guarantee Transfer LUL's payment obligations under any of the Transaction Documents, the Stand Still Agreement, the Put Option Agreement and/or the Share Purchase Agreement are not supported in accordance with clause 33.3 (excluding any obligations thereunder in so far as they relate to Clause 33.3A), then LUL shall procure that, within fourteen (14) days of such event, LUL's payment obligations under the relevant Transaction Documents, the Stand Still Agreement, the Put Option Agreement and the Share Purchase Agreement are so supported in accordance with clause 33.3.

33.5A If at any time following a Change of Control of LUL or a Guarantee Transfer LUL's payment obligations under any of the Transaction Documents, the Stand Still Agreement, the Put Option Agreement and/or the Share Purchase Agreement are not supported in accordance with clause 33.3A and Clause 33.3 in so far as it relates to Clause 33.3A but not otherwise, then LUL shall procure that, within fourteen (14) days of such event, LUL's payment obligations under the relevant Transaction Documents, the Stand Still Agreement, the Put Option Agreement and the Share Purchase Agreement are so supported in accordance with clause 33.3A.

33.6 LUL shall procure that:

- (a) London Regional Transport shall not be released or discharged from its obligations under the Guarantee or the TfL Obligations unless and until the obligations of London Regional Transport under the Guarantee, the Stand Still Agreement and the Put Option Agreement are transferred to or are otherwise assumed by TfL or have been so transferred or assumed;
- (b) when the ownership of LUL is transferred from London Regional Transport to TfL, the obligations of London Regional Transport under the Guarantee, the Stand Still Agreement and the Put Option Agreement are also transferred to or are otherwise assumed by TfL to the extent not then already so transferred or assumed; and
- (c) the transfer from London Regional Transport to or assumption by TfL of the Guarantee and the TfL Obligations shall not be effected in any manner which would affect adversely the security position of the Funders in respect of the Guarantee, the Stand Still Agreement and/or the Put Option Agreement, whether as to perfection, priority or otherwise.

#### SCHEDULE 4

#### CLAUSE 40 OF THE AMENDED AND RESTATED SERVICE CONTRACT

##### **Warning Notices and Default Notices**

- 40.1 LUL may serve a Warning Notice if:
- (a) Infraco is in material breach of any Infraco Obligation which is material in the context of the Contract as a whole and which has been the subject of a prior Corrective Action Notice and such breach is continuing and remains unremedied following the expiry of any cure period pursuant to clause 22.1(b) (*Failure to Comply with Obligations*); or
  - (b) Infraco is in persistent breach of any Infraco Obligations which breaches have been the subject of prior Corrective Action Notices and which, taken together, demonstrate that Infraco is unable or unwilling to perform its obligations under the Contract, to a material extent; or
  - (c) LUL is required to step-in by a Northern Line Contractor in accordance with either of the NLTSC Step-in Agreements (other than as a result of the occurrence of NL LUL Circumstances).

##### **Excused breaches**

- 40.2 Clauses 40.1(a) and (b) (*Infraco breach*) shall not apply to:
- (a) any breach which is attributable to a Delay Event (without prejudice to Infraco's obligations to comply with the provisions of clause 26 (*Reinstatement of Infrastructure*) following the occurrence of a Covered Risk); or
  - (b) any material or persistent breach to the extent that it is caused by:
    - (i) a failure by a Northern Line Contractor to perform its obligations under any Northern Line Train Service Contract; or
    - (ii) without prejudice to Infraco's obligations under clause 11A.9.1, the inability of Infraco to compel any Northern Line Contractor to take (or not to take) the action required for Infraco to comply with such obligation in circumstances where it is not reasonably practicable for Infraco (acting in an efficient and economic way, using Good Industry Practice and giving high priority to the obligation) to comply with the obligation in any other way,

and Infraco is taking all reasonable steps available to it under the terms of the Northern Line Train Service Contracts to cause the relevant Northern Line Contractor to perform such obligations or, in appropriate circumstances, to obtain equivalent performance by terminating the relevant Northern Line Train Service Contract and making alternative arrangements;

- (c) any breach to the extent that it occurs as a result of a breach by Infraco of any of its obligations under the Northern Line Train Service Contracts in circumstances where such breach under the Northern Line Train Service Contracts is caused by

- (i) Infraco complying with its obligations under the Contract or (ii) the occurrence of NL LUL Circumstances;
- (d) any breach to the extent that it occurs as a result of the occurrence of a Company Event of Default specified in clause 27.1(f) or (g) of the Usage Contract or the occurrence of an event of default under clause 17.1(D) or (M) of the Direct Leases, provided that this clause 40.2(d) shall only apply if either proviso (i) or proviso (ii) to clause 22.3(c) applies *mutatis mutandis*,

provided that in each case Infraco is utilising all reasonable mitigation measures (acting efficiently and economically and using Good Industry Practice) to limit the effects and extent of the event(s) or circumstance(s) that caused the relevant breach.

### **LUL breaches**

40.3 Infraco may serve an LUL Default Notice if:

- (a) LUL has failed to pay an amount or amounts in aggregate in excess of £20 million to Infraco in accordance with its obligations hereunder (excluding amounts to the extent that LUL is disputing the same in good faith prior to any determination under the Dispute Resolution Agreement) and then failed to remedy such breach within twenty eight (28) days after receipt of written notice from Infraco demanding payment and a formal demand under the Guarantee has been made by Infraco which the Guarantor has also failed to meet within twenty eight (28) days of such formal demand; or
- (b) LUL fails to comply with clause 33.3, clause 33.3A, clause 33.3B, clause 33.5 or clause 33.5A (*Change of Control of LUL*), provided that such LUL Default Notice is served by Infraco within sixty (60) days after the later of the date, in each case, by which LUL was obliged to comply with such clauses and the date on which Infraco received written notice from LUL that LUL was in breach of such clause; or
- (c) a nationalisation, sequestration or expropriation of a material part of the Assets and/or the shares of Infraco occurs; or
- (d) a Law Change occurs which renders it impossible for Infraco to perform a material part of its obligations under the Transaction Documents and either:
  - (i) LUL does not elect to restructure Infraco's Obligations pursuant to an Extraordinary Review; or
  - (ii) LUL does elect to restructure Infraco's obligations pursuant to an Extraordinary Review, but such restructure does not remedy the impossibility by the time such impossibility occurs.
- (e) LUL commits a material breach of its obligations under clause 16.1 (*Co-operation*) in a manner which substantially frustrates or renders it impossible for Infraco to perform its obligations either altogether or to a very substantial extent for a continuous period of six (6) months,

PROVIDED THAT prior to the issue of such LUL Default Notice:

- (i) Infraco has issued to LUL a notice stating the circumstances giving rise to the LUL Default Notice and stating a period of time, being not less than ninety (90) days or such longer period as is sufficient for such circumstances to be capable of remedy by LUL acting efficiently and

economically, using Good Industry Practice and giving top priority (subject only to safety being paramount) to the need to remedy the circumstances; and

- (ii) LUL has not remedied such circumstances within the specified remedial period, and such circumstances are subsisting unremedied at the time of issue of the LUL Default Notice;
- (f)
  - (i) it is determined that several separate failures by LUL to act in accordance with clause 16.1 (*Co-operation*) taken together demonstrate that there have been persistent breaches of LUL's obligations pursuant to clause 16.1 (*Co-operation*) that demonstrate that LUL is unable or unwilling to perform its obligations to a material extent (a **Serious Breach**); and
  - (ii) within two years after the determination referred to in paragraph (i) above there have been several further separate failures by LUL to act in accordance with clause 16.1 (*Co-operation*) which together demonstrate that there have been persistent breaches of LUL's obligations pursuant to clause 16.1 (*Co-operation*) that demonstrate that LUL is unable or unwilling to perform its obligations to a material extent (a **Subsequent Serious Breach**) in respect of which:
    - (aa) Infraco has given notice describing the failures in question; and
    - (bb) LUL has failed to remedy that state of affairs in the manner described in paragraph 40.3B below; or
- (g) the Restated Terms at any time do not contain the 41.15 Terms.

40.3A The period of two years referred to in clause 40.3(f)(ii) shall start to run on the earlier of (1) agreement by the parties or (2) a determination by an Adjudicator pursuant to the Dispute Resolution Agreement or (3) a determination by the High Court that the circumstances described in clause 40.3(f)(i) exist provided that no LUL Default Notice may be served pursuant to clause 40.3(f) following the commencement of any such two-year period which has started as a result of a determination by an Adjudicator unless LUL either does not refer the matter to the High Court within the time permitted by the Dispute Resolution Agreement, or the parties reach agreement that the determination was correct or the decision of the High Court agrees with the determination of the Adjudicator.

40.3B In respect of a Subsequent Serious Breach:

- (a) the Subsequent Serious Breach shall be treated as remedied if LUL achieves a Durable Remedy within the Serious Breach Remedial Period; and
- (b) notwithstanding that the Subsequent Serious Breach shall have been remedied as set out in sub-clause (a):
  - (i) a determination that there has been a Subsequent Serious Breach shall be treated as a determination pursuant to clause 40.3(f)(i) for the purpose of the commencement of a further two-year time period referred to in clause 40.3(f)(ii); and
  - (ii) if, within such further two-year period there shall be a further Subsequent Serious Breach then Infraco may serve an LUL Default Notice and clauses 40.3(f)(ii)(aa), 40.3(f)(ii)(bb) and sub-clause (a) of this clause shall not apply in respect of such further Subsequent Serious Breach.

For the purpose of this clause 40.3:

(A) a **Durable Remedy** will have been achieved if LUL has eliminated the cause or causes of the relevant breaches, or the circumstances giving rise to such breaches, such that a reasonable person would consider that LUL had taken appropriate steps as would be taken by a person giving top priority (subject only to safety being paramount) to the need to remedy the breaches or circumstances in such a way that it is unlikely that a further Serious Breach will occur; and

(B) the **Serious Breach Remedial Period** shall be ninety (90) days after the notice from Infraco under clause 40.3(f)(ii)(aa) or such longer period as is sufficient for the breaches to be capable of remedy by LUL acting efficiently and economically utilising Good Industry Practice and giving top priority (subject only to safety being paramount) to the need to remedy the breaches.

### **Cumulative rights**

40.4 The service of a Warning Notice by LUL or an LUL Default Notice by Infraco is without prejudice to any other rights or remedies the serving party may have.

### **Infraco's opportunity to remedy**

40.5 Where the Warning Notice was served on the basis of clause 40.1(a) or 40.1(b), subject to clause 40.11 (*Irremediable breach*), LUL shall provide Infraco with a period of not less than ninety (90) days from service of its Warning Notice to remedy the circumstances that gave rise to its service. The remedy period shall be:

- (a) specified by LUL in its Warning Notice or as soon as is reasonably practicable afterwards; and
- (b) such period as is sufficient for the circumstances to be capable of remedy by an efficient and economic Infraco utilising Good Industry Practice that is giving top priority (subject only to safety being paramount) to the need to remedy the circumstances.

40.5A Where the Warning Notice was served on the basis of clause 40.1(c) the following provisions will apply:

- (a) LUL shall provide Infraco with a period of not less than ninety (90) days from service of its Warning Notice to remedy the circumstances that give rise to its service. The remedy period shall be:
  - (i) specified by LUL in its Warning Notice or as soon as reasonably practicable afterwards; and
  - (ii) assuming that LUL and Infraco were both to endeavour (acting efficiently and economically, utilising Good Industry Practice and giving the achievement of such objective top priority (subject only to safety being paramount)), to ensure that the Release Circumstances (as defined in clause 40.5A(d)) exist as soon as reasonably practicable (the **Assumption**), such period as is sufficient to ensure that the Release Circumstances do exist as soon as reasonably practicable;
- (b) the circumstances that gave rise to the service of the Warning Notice will be treated as remedied when the Release Circumstances exist;

- (c) the circumstances that gave rise to the service of the Warning Notice will be treated as remedied if the Release Circumstances do not come about solely as a result of either:
- (i) the relevant Northern Line Contractor(s) not being satisfied that the circumstances specified in clause 7.6.1(b) of the relevant NLTSC Step-in Agreement have occurred in respect of obligations arising during and in respect of the relevant step-in period that have been assumed by LUL (but, for the avoidance of doubt, such circumstances that gave rise to the service of the Warning Notice will not be treated as remedied in accordance with this clause 40.5A(c)(i) if the relevant Northern Line Contractor is not satisfied as required by clause 7.6.1(b) of the relevant NLTSC Step-In Agreement that LUL has in all material respects discharged any obligations of Infraco that arose prior to the relevant step-in period (for the avoidance of doubt, unless such circumstances are treated as remedied in accordance with clause 40.5A(c)(ii)); or
  - (ii) a failure by LUL to act in the manner described in the Assumption; and
- (d) for the purposes of this clause 40.5A, **Release Circumstances** means the circumstances that must exist to oblige the relevant Northern Line Contractor(s) to issue the notice that would give rise to the occurrence of the Mandatory Step-In Release Date (as defined in the relevant NLTSC Step-in Agreement).

**Infraco to remedy despite dispute, etc.**

40.6 If LUL has not yet stated whether a period of more than ninety (90) days is required or if Infraco disputes whether the period stated by LUL is sufficient (or whether circumstances entitling LUL to serve the Warning Notice subsist) then:

- (a) Infraco shall nevertheless commence remedial action pending LUL's notification of the remedial period and in parallel with referring the question (if any) of the sufficiency of the period or subsistence of the circumstances for determination in accordance with the Dispute Resolution Agreement; and
- (b) if any dispute referred to in paragraph (a) above is determined in Infraco's favour, Infraco shall be entitled to recover from LUL costs incurred in respect of parallel remedial action to the extent that these costs would not have been incurred by Infraco in performing the Contract but for the obligation to undertake such parallel remedial action.

40.6A This clause shall apply if:

- (a) a Mandatory Sale has been completed following a Mandatory Sale Notice served by LUL prior to a final resolution pursuant to the Dispute Resolution Agreement of any Dispute arising out of or connected with the Mandatory Sale Notice or the circumstances alleged to permit the Mandatory Sale Notice to be served; and
- (b) the final resolution of the Dispute is that the Mandatory Sale Notice was not valid or the circumstances permitting the Mandatory Sale Notice did not exist.

When this clause 40.6A applies clause 4.9A of the Dispute Resolution Agreement shall not apply, and Infraco shall be entitled to receive forthwith (or in accordance with the following provisions, if later) payment or payments from LUL of such amount (the **Top Up Amount**) as shall ensure that Infraco receives an aggregate amount pursuant to this clause 40.6A and clause 41 (*Mandatory Sale*) equal to the amount (the **Relevant MSA**)

which Infraco would have received on a Mandatory Sale following an LUL Default (such amount of the Top Up Amount being the **Basic Amount**) together with the amount (if any) that would have been payable under clause 41.13 (*Tax*) and together with or, as the case may be, less any adjustment due under clause 41.14(k) (*Tax*) had the Infraco received the Relevant MSA as consideration for such Mandatory Sale (in respect of any such additional payment or adjustment that would have been payable before the date (the **Top Up Date**) on which the Basic Amount is actually paid, the date of such payment or adjustment shall be the Top Up Date and, in respect of any such additional payment or adjustment that would have been payable after the Top Up Date, the date of such payment or adjustment shall be in accordance with the provisions of clause 41.13 (*Tax*) or, as the case may be, clause 41.14 (*Tax*)), together with an amount equal to interest at the Applicable Rate:

- (i) on the Basic Amount, from the date when the Underpinned Amount was paid until the Top Up Date;
- (ii) on such part of the Top Up Amount as is in respect of an additional payment under clause 41.13 (*Tax*) that would have been payable before the Top Up Date (if any), from the date on which such additional payment would have been due and payable to the Top Up Date (save that, to the extent that Infraco has underpaid instalments of tax due prior to the Top Up Date in respect of an accounting period because the payments made did not take into account the Basic Amount due later in that accounting period in circumstances where such instalments of tax are in respect of a liability to Taxation which would have been reflected in an additional payment under clause 41.13 (*Tax*), interest on the part of the Top Up Amount as is in respect of the additional payment under clause 41.13 (*Tax*) shall run from the date (or dates) on which instalment or instalments that were underpaid were due and payable); and
- (iii) on such adjustment under clause 41.14(k) (*Tax*) as is reflected in the Top Up Amount (if any), in accordance with clause 41.14(l),

and such payment or payments by or on behalf of LUL shall be in full and final settlement of all Infraco's claims and rights against LUL, and all LUL's claims and rights against Infraco, for breaches and/or the Mandatory Sale of the Contract whether in contract, tort, restitution or otherwise save for:

- (iv) any liability of LUL or Infraco that arose prior to the Contract Disposal Date (but not from the Mandatory Sale itself or from a breach of the Contract Disposition Agreement) that has not been taken into account in the calculation of the formula in the DCF Amount or the Estimated Fair Value of the Contract (as applicable);
- (v) any liability of Infraco to pay any amount to LUL or LUL to Infraco under the Contract Disposition Agreement; and
- (vi) any rights of Infraco under clauses 41.3(b) or (c) (*Sale process*) and/or 41.6B (*Interim Payment*) and/or clause 41.13 (*Tax*) or 41.14 (*Tax*) (provided that, in the case of clauses 41.13 and 41.14, any payment due (or which becomes due) under those clauses shall take into account any payment that is or will become due and payable under this clause 40.6A by reference to amounts that would have been payable under clause 41.13 or clause 41.14).

### **Means of remedying past performance failures**

40.7 Where the circumstances that gave rise to service of the Warning Notice relate to past failure in respect of delivery of one or more Service Outputs set out in Schedule 2.1 (*Service Outputs and Constraints*), the breach shall be regarded as having been remedied if Infraco delivers the relevant Service Outputs at a level at least equal on average to Benchmark for such number of Payment Periods as is reasonably necessary to demonstrate that such attainment of Benchmark levels was not attributable solely to the inherent variability of the relevant measure as such attribution is assessed pursuant to the provisions of paragraph 7 (*Limit of LUL Remedies*) of Schedule 2.1 (*Service Outputs and Constraints*). Without prejudice to clause 40.5 (*Infraco's opportunity to remedy*), the remedial period shall be such period of time as is sufficient for an efficient and economic Infraco utilising Good Industry Practice that is giving top priority (subject only to safety being paramount) to so deliver the relevant Service Outputs.

### **Remedial period extended by Delay Events**

40.8 If Infraco's ability to remedy the circumstances during the remedial period is or is likely to be affected by a Delay Event:

- (a) Infraco shall give written notice to LUL (except in cases of emergency when shorter, oral notice may be given but which shall be confirmed in writing as soon as reasonably practicable thereafter) as soon as reasonably practicable after:
  - (i) Infraco becomes aware of the occurrence of a Delay Event; or
  - (ii) Infraco can foresee a Delay Event occurring;
- (b) any notice given pursuant to subclause (a) above shall not, in any event, be given later than twenty four (24) hours after Infraco becomes aware of the occurrence of such a Delay Event. In either case, such notice shall state the likelihood and probable extent of the delay;
- (c) Infraco shall use, and continue to use, its best endeavours to avoid or reduce the effects or likely effects of any Delay Event on its ability to comply with the Warning Notice within the period of time that LUL specified; and
- (d) where Infraco is otherwise in compliance with this clause 40.8 (*Remedial period extended by Delay Events*), Infraco shall be entitled to an extension of such period by the amount of time that would be required by an Infraco acting efficiently and economically using Good Industry Practice that is using its best endeavours to avoid or reduce the effects or likely effects of the Delay Event, to comply with the Warning Notice.

### **LUL step-in to be a Delay Event**

40.9 For purposes of clause 40.8 (*Remedial period extended by Delay Events*) only, the exercise by LUL of any rights of step-in under clause 23 (*LUL Step-in Rights*) shall constitute a Delay Event in the event that such step-in affects Infraco's ability to remedy the circumstances but in respect only of the period of time from the date of step-in to the date on which an efficient and economic Infraco acting in accordance with Good Industry Practice that is giving top priority (subject only to safety being paramount) to securing LUL's willingness and ability to step out pursuant to clause 23 (*LUL Step-in Rights*) would have secured LUL's step out.

### **Remedial Period and Extraordinary Review**

40.10 If LUL serves a Warning Notice in relation to circumstances primarily attributable to matters that are the subject of a prior notice served by Infraco pursuant to paragraph 14 of Schedule 1.9 (*The Statutory Arbiter and Reviews*) and:

- (a) Infraco has not satisfied LUL (acting reasonably) that the circumstances giving rise to service of the Warning Notice have been remedied at the expiry of the remedial period; and
- (b) at that time the Extraordinary Review instigated by Infraco pursuant to Schedule 1.9 (*The Statutory Arbiter and Reviews*) is still continuing,

then the continuance of the Extraordinary Review shall be treated as a Delay Event for purposes of this clause until such time as the Statutory Arbiter issues a direction pursuant to paragraph 1.9(f) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) and shall then entitle Infraco to such extension of time (if any) as is then warranted by the terms of clause 40.8(d) (*Remedial period extended by Delay Events*) with a view to the Infraco being afforded a reasonable opportunity to utilise any increased resources available to it as a consequence of the Extraordinary Review which were not available to it beforehand in remedying the circumstances giving rise to the Warning Notice.

### **Irremediable breach**

40.11 Where LUL believes that the breach giving rise to the Warning Notice is not capable of remedy it shall give notice of that fact to Infraco in the Warning Notice. If Infraco believes the breach to be capable of remedy it shall promptly undertake remedial action on the basis set out in clause 40.6 (*Infraco to remedy despite dispute, etc.*) and it shall promptly raise in dispute whether the breach is remediable and, if it believes that the remedial period to which it is entitled is in excess of ninety (90) days, whether a period of ninety (90) days is sufficient within the terms of clause 40.5 (*Infraco's opportunity to remedy*).

40.11A For the purposes of the Contract, breaches which are capable of remedy shall include (but not be limited to) breaches where:

- (a) the breach is non-payment of a sum due under the Contract;
- (b) the consequence of the breach is that one or more Assets do not have certain physical characteristics, or do not meet certain required Standards and that state of affairs can be corrected by repair or replacement of the Assets; or
- (c) the breach is a failure or omission to carry out, fulfil or comply with a particular requirement by a particular date or within a particular period stipulated by or pursuant to the Transaction Documents and it is still possible to fulfil or comply with that requirement (albeit not by or within the relevant date or period).

### **Suspension of Infraco services**

40.12 If on or at any time following service of a Warning Notice:

- (a) the events giving rise to such Warning Notice are subsisting substantially unremedied;
- (b) Infraco is not remedying the circumstances giving rise to the Warning Notice as contemplated by clause 40.5 (*Infraco's opportunity to remedy*); and

- (c) LUL reasonably considers that as a consequence of the circumstances giving rise to such Warning Notice it is necessary to ensure the reliable operation of the Infraco Network in a manner consistent with the requirements of the Transaction Documents to take control of the Infraco Network,

then LUL may, by notice in writing having immediate effect, suspend performance by Infraco of all or any part of the Services and itself perform or procure a third party to perform such of the Services as LUL considers appropriate and the provisions of clause 23 (*LUL Step-in Rights*) and clause 40.9 (*LUL step-in to be a Delay Event*) shall apply mutatis mutandis.

**Withdrawal of suspension**

40.13 LUL may at any time modify or revoke any suspension of performance pursuant to clause 40.12 (*Suspension of Infraco services*) and any such suspension shall automatically be fully revoked on completion of a Contract Sale.

**SCHEDULE 5**

**CLAUSE 41 OF THE AMENDED AND RESTATED SERVICE CONTRACT**

**CLAUSE 41 - MANDATORY SALE**

**Mandatory Sale activation by LUL**

41.1 A Mandatory Sale Notice may be served by LUL if the circumstances described in sub-paragraphs (a), (b), (d), (e), or (g) prevail, and LUL shall serve a Mandatory Sale Notice if the circumstances described in sub-paragraphs (c) or (f) prevail. The circumstances described are:

- (a) if Infraco has not remedied the circumstances giving rise to the service of a Warning Notice within ninety (90) days thereafter or, if longer, within the relative remedial period and for so long thereafter as the circumstances are subsisting substantially unremedied;
- (b) at any time when LUL has been in continuous step-in of substantially all of the Infraco Obligations for a continuous period in excess of one year and no arrangements are in place for LUL to step out as contemplated by clause 23.5 (Step-out Notice);
- (c) if in relation to a Periodic Review, the circumstances of paragraph 10.2 of Schedule 1.9 (The Statutory Arbitrator and Reviews) apply;
- (d) pursuant to clause 46.3 (Consequences of Prohibited Acts or Safety Breach);
- (e) if:
  - (i) LUL has received a notice in writing from the Senior Funders pursuant to clause 3.1 of the Stand Still Agreement; and
  - (ii) (A) the period of the notice under clause 3.1 of the Stand Still Agreement has expired or alternatively (B) LUL has issued a notification that it does not intend to deliver a Notice of Undertaking (as defined in the Stand Still Agreement) and at least 21 days has elapsed since LUL received the notice referred to in paragraph (i) above; and
  - (iii) at the time when the condition referred to in paragraph (ii)(A) or (B) (as the case may be) is satisfied, the right of the Senior Funders to exercise their right under clause 23 of the Issuer/Borrower Facility Agreement (as that term is defined in the Put Option Agreement) is continuing,

provided that, if when the condition referred to in paragraph (ii)(A) or (B) (as the case may be) is satisfied there is a bona fide dispute between Infraco and the Senior Funders with regard to their ability to exercise that right then, LUL may not serve a Mandatory Sale Notice unless and until such dispute is resolved in favour of the Senior Funders;

- (f) if at any time:
  - (A)

- (i) the Secretary of State, LRT or LUL announces that it no longer intends to seek to transfer Infraco BCV and Infraco SSL to the private sector; or
- (ii) circumstances exist which demonstrate that LRT or LUL has permanently ceased actively and diligently taking steps to meet the objective of transferring Infraco BCV and Infraco SSL to the private sector or that such steps have no reasonable prospect of success;

unless,

(B) at any relevant time, LRT, LUL and Infraco agree or failing which, leading counsel, instructed jointly by LRT, LUL, and Infraco has advised that it is lawful for LRT and LUL to pursue an alternative course of action

provided that

(C) the circumstances in paragraph (A) of this clause 41.1(f) shall be treated as prevailing (notwithstanding paragraph (B) if leading counsel has given advice referred to in paragraph (B)) from such time as there is a decision of a competent court that the course being pursued by LRT and LUL is unlawful; and

- (g) if at any time LRT or LUL determines that it no longer wishes to seek to transfer Infraco BCV and Infraco SSL to the private sector.

#### **Mandatory Sale activation by Infraco**

41.2 A Mandatory Sale Notice may be served by Infraco if the circumstances described in sub-paragraphs (a), (b) or (c) prevail, and Infraco shall serve a Mandatory Sale Notice if the circumstances described in sub-paragraphs (d) or (e) prevail. The circumstances described are:

- (a) at any time when LUL has been in continuous step in of substantially all of the Infraco Obligations for a continuous period in excess of one year and no arrangements are in place for LUL to step out as contemplated by clause 23.5 (Step-out Notice);
- (b) if Infraco has served a LUL Default Notice on LUL that remains substantially unremedied at any time thereafter or concurrently with the service of an LUL Default Notice;
- (c) where LUL has failed to serve a Mandatory Sale Notice under clause 41.1(c) or 41.1(f);
- (d) where notice is given by the Funders to LUL and Infraco under clause 23.3 of the Issuer/Borrower Facility Agreement that the circumstances of clause 22.22(a) of the Issuer/Borrower Facility Agreement prevail; or
- (e) where notice is given by the Funders to LUL and Infraco under clause 23.3 of the Issuer/Borrower Facility Agreement that the circumstances of clause 22.22(b) of the Issuer/Borrower Facility Agreement prevail.

#### **Consequences of Mandatory Sale activation on Infraco financing**

41.2A Following service of a Mandatory Sale Notice by either party, LUL shall, to the extent not otherwise paid pursuant to the Stand Still Agreement and subject to clause 57.3, pay directly to the Issuer Security Trustee (or such other person as it directs from

time to time) as and when due all interest payments falling due for payment to the Senior Funders in accordance with the terms of any Funding Agreement and LUL shall be entitled to set-off from the ISC which would otherwise be payable by LUL to Infraco any amounts so paid.

### **Sale process**

41.3 The parties agree to act as follows during and, where applicable, after the Market Period:

- (a) jointly by way of an open and fair public tender procedure (which will require tenderers to pay the purchase price by way of a single capital payment payable no later than six (6) months after expiry of the Market Period and to be a person who meets the definition of a Permitted Transferee and who is not a person to whom LUL may object as a recipient of shares transferred or issued in accordance with clause 32.4 (Change of Control of Infraco) (such person shall be described as meeting the Permitted Transferee Conditions), to market the opportunity to enter into a Contract Disposition Agreement with Infraco and LUL at a price not less than the aggregate of (i) the Underpinned Amount and (ii) any amounts that would be due under clause 41.13 (Tax) upon the bases and assumptions set out in clause 41.13(d) (Tax) if a Contract Sale were completed with an LUL Nominee in accordance with clause 41.5(a) below (the 41.13 Amount and, together with the Underpinned Amount, the Grossed-up Underpinned Amount) (for this purpose, meaning the parties will provide to tenderers a description of the manner in which the 41.13 Amount and the Underpinned Amount will be calculated);
- (b) to accept the most economically advantageous offer received from a Permitted Transferee who is a person who meets the Permitted Transferee Conditions, provided that the terms of such offer require the transferee to pay a price by way of a single capital payment which is equal to or greater than the Grossed-up Underpinned Amount not later than the date six (6) months after expiry of the Market Period and also provided that if the most economically advantageous offer is less than the highest offer received from a Permitted Transferee who meets the Permitted Transferee Conditions, LUL shall on or prior to the Contract Disposal Calculation Date also pay to Infraco, or procure the payment to Infraco of, the difference between the most economically advantageous offer and the highest offer;
- (c) to accept an offer to pay a price by way of a single capital payment less than the Grossed-up Underpinned Amount not later than the date six (6) months after expiry of the Market Period at LUL's election and on terms that LUL pays, or procures the payment, to Infraco of the amount by which the higher of:
  - (i) the Grossed-up Underpinned Amount; and
  - (ii) the highest offer by way of a single capital payment received from a Permitted Transferee who meets the Permitted Transferee Conditions,
 exceeds the accepted price, on or prior to the Contract Disposal Calculation Date.

41.3A Where

- (a) a payment is paid pursuant to clause 41.3(b) or (c) above and it is subsequently identified that the amount of the 41.13 Amount is less than or, as the case may be, greater than the amount taken into account in calculating the Grossed-up

Underpinned Amount for the purposes of sub-clause (b) or, as the case may be, (c) above (such subsequently identified amount of the 41.13 Amount being the Adjusted 41.13 Amount); and

- (b) the aggregate of (i) the amount received or to be received from a Permitted Transferee and (ii) the amount received or to be received from LUL (including any amount received or to be received from any person procured by LUL) , in each case pursuant to sub-clause (b) and (c), is less than or, as the case may be, greater than the Grossed-up Underpinned Amount calculated taking into account the Adjusted 41.13 Amount (or, if the highest offer for the purposes of clause 41.3(c)(ii) exceeds that revised Grossed-up Underpinned Amount then the amount of that highest offer),

then LUL shall pay or procure the payment to Infraco or, as the case may be, Infraco shall pay to LUL (to the greatest extent possible by way of repayment to the person who LUL procured to make the payment to Infraco, then to the greatest extent possible by way of repayment to LUL, then in the remainder by way of payment to LUL) such an amount as ensures that the net amount received or to be received by Infraco is equal to the highest offer for the purposes of clause 41.3(c) or the aggregate of the Underpinned Amount and the Adjusted 41.13 Amount, (as the case may be) any such adjusting payments being made (in the case of a payment by LUL) on the date on which the underlying amount would have been payable under clause 41.13 (Tax) or (in the case of a payment by Infraco) on the date on which a payment by LUL would have been due to Infraco in respect of the underlying amount if such underlying amount was an additional payment due under clause 41.13(a).

#### **Market Period not to apply in certain cases**

41.4 The provisions of clause 41.3 (Sale process) shall not apply if:

- (a) LUL serves a Mandatory Sale Notice pursuant to clause 41.1(c), (d), (f), or (g) (Mandatory Sale activation by LUL); or
- (b) Infraco serves a Mandatory Sale Notice pursuant to clause 41.2(b), (c), (d) or (e) (Mandatory Sale activation by Infraco).

#### **Sale to LUL Nominee**

41.5 LUL shall procure that an LUL Nominee (being a person within the charge to United Kingdom income tax or corporation tax as regards the Contract and the Assets) enters into a Contract Disposition Agreement with Infraco and shall endeavour to procure that the sale pursuant to such Contract Disposition Agreement is completed on the following basis:

- (a) save where any of paragraphs (b), (c), (d) or (e) below apply, at a price by way of a single capital payment equal to the Underpinned Amount not later than the date which is six (6) months after the date of Infraco's request made to LUL following expiry of the Market Period (or, where a PPP Administrator of Infraco is appointed subsequent to the service of the Mandatory Sale Notice, the earlier of such date and the date which is six (6) months after the date of the appointment of a PPP Administrator of Infraco) together with any amount due under clause 41.13 (Tax) (the date of any such additional payment being in accordance with the provisions of clause 41.13 (Tax));
- (b) at a price by way of a single capital payment equal to the Estimated Fair Value of the Contract (or, if (A) the aggregate of the Approved Debt and Approved

Mezzanine Debt, in each case as at the Contract Disposal Calculation Date, together with the best estimate that can be made as at the Contract Disposal Calculation Date of the additional amount (if any) in respect of Taxation (as defined in clause 41.13(b)) which would be payable on the aggregate of the Approved Debt and the Approved Mezzanine Debt as determined upon the assumptions and bases set out in clause 41.13(d) (Tax) exceeds (B) the Estimated Fair Value of the Contract together with or, as the case may be, less the best estimate that can be made as at the Contract Disposal Calculation Date of the adjustment (if any) that would be due on applying clause 41.14 (Tax) on the basis that the Estimated Fair Value of the Contract was an amount of Consideration to which clause 41.14 (Tax) applies, at a price equal to the aggregate of the Approved Debt and Approved Mezzanine Debt, in each case as at the Contract Disposal Calculation Date) not later than the date which is six (6) months after the date of the Mandatory Sale Notice served pursuant to clause 41.2(b), in either case together with any amount due under clause 41.13 (Tax) and together with or, as the case may be, less any adjustment due under 41.14 (Tax) (the date of any such additional payment or adjustment being in accordance with the provisions of clause 41.13 (Tax) or, as the case may be, 41.14 (Tax));

- (c) at a price by way of a single capital payment equal to the relevant Special Mandatory Sale Amount not later than the date which is six (6) months after the date from which paragraph 10.2 of Schedule 1.9 (The Statutory Arbitrator and Reviews) applies together with any amount due under clause 41.13 (Tax) (the date of any such additional payment being in accordance with the provisions of clause 41.13 (Tax));
- (d) at a price by way of a single capital payment equal to the Corrupt Gifts and Safety Breach Disposition Price not later than the date which is six (6) months after LUL serving a Mandatory Sale Notice in the circumstances described in clause 46 (Corrupt Gifts and Safety Breach) together with any amount due under clause 41.13 (Tax) (the date of any such additional payment being in accordance with the provisions of clause 41.13 (Tax)); or
- (e) at a price by way of a single capital payment equal to the Extraordinary Mandatory Sale Price not later than the date which is six (6) months after (as applicable) LUL serving a Mandatory Sale Notice in the circumstances described in clause 41.1(f) or (g) or Infraco serving a Mandatory Sale Notice in the circumstances described in clauses 41.2(c) (in so far as clause 41.2(c) relates to clause 41.1(f)), (d) or (e), in either case, together with any amount due under clause 41.13 (Tax) (the date of any such additional payment being in accordance with the provisions of clause 41.13 (Tax)) and, so that in any event, whether or not a Contract Disposition Agreement has been completed, LUL shall make, or procure that an LUL Nominee makes, a payment to Infraco on account of the Extraordinary Mandatory Sale Price, no later than 90 days after the service of the Mandatory Sale Notice, in an amount equal to the aggregate of paragraphs (a) and (b) of the definition Extraordinary Mandatory Sale Price.

41.5A If the price payable on a sale to an LUL Nominee under clause 41.5 is calculated taking into account the best estimate of any amount which would be payable under clause 41.13 and/or of any adjustment (if any) that would be required under clause 41.14 and such best estimate differs from the amount or adjustment that would be payable or required (as applicable), LUL shall procure the payment to Infraco or, as the case may be, Infraco shall pay to the LUL Nominee (to the greatest extent possible by way of repayment of amounts paid by the LUL Nominee then in remainder by way of payment to the LUL Nominee) such amount as ensures that the total amount received and not repaid

by Infraco equals the amount which would have been so received and not repaid by Infraco had the amount that would be payable under clause 41.13 and/or the adjustment that would be required under clause 41.14 been known at the time of the best estimate thereof.

#### **Process of sale to LUL Nominee**

41.6 The following shall apply to any sale involving the LUL Nominee:

- (a) LUL may require that any Contract Sale pursuant to clause 41.5 (Sale to LUL Nominee) proceeds in a manner which meets LUL's reasonable requirements as to process and which complies with all applicable laws and the parties to any Contract Sale shall enter into a Contract Disposition Agreement;
- (b) to the extent that the Underpinned Amount is less than zero, then an amount equal to the lower (in absolute terms) of:
  - (i) the Underpinned Amount; and
  - (ii) the sum of  $C - (E+F)$  in the formula for DCF Amount,
 shall be due and payable by Infraco to the LUL Nominee on the Contract Disposal Date;
- (c) any dispute as to the calculation or determination of the Underpinned Amount or any other amount to be determined to give effect to this clause 41 (other than pursuant to clause 41.14 (Tax)) shall be resolved in accordance with the terms of the Dispute Resolution Agreement;
- (d) LUL shall procure that the LUL Nominee (if any) shall, on the Contract Disposal Date, agree with Infraco the proportion of the relevant amount referred to in clause 41.5 (Sale to LUL Nominee) to be allocated on a just and reasonable basis to each of the Assets and the Contract to be transferred to or vested in the LUL Nominee on the Contract Disposal Date;
- (e) subject to clause 40.6A (Infraco to remedy despite dispute etc.), the payment by or on behalf of the LUL Nominee of the amount referred to in clause 41.5 (Sale to LUL Nominee) (for the avoidance of doubt, including any additional payment under clauses 41.13 or 41.14 (Tax)) (for the purposes of this clause 41, the Consideration), shall (subject to clause 41.5A) be in full and final settlement of all Infraco's claims and rights against LUL, and all LUL's claims and rights against Infraco, for breaches and/or the Mandatory Sale of the Contract whether in contract, tort, restitution or otherwise save for:
  - (i) any liability of LUL or Infraco that arose prior to the Contract Disposal Date (but not from the Mandatory Sale itself or from a breach of the Contract Disposition Agreement) that has not been taken into account in the calculation of the formula in the DCF Amount or the Estimated Fair Value of the Contract (as applicable); and
  - (ii) any liability of Infraco to pay any amount to LUL or LUL to Infraco under the Contract Disposition Agreement.

### Permitted Transferee Payment

41.6A Subject to clause 40.6A (Infraco to remedy despite dispute etc.), any payment by or on behalf of LUL of the amount referred to in clause 41.3(c) shall, subject to clause 41.3A, be in full and final settlement of all Infraco's claims and rights against LUL, and all LUL's claims and rights against Infraco, for breaches and/or the Mandatory Sale of the Contract whether in contract, tort, restitution or otherwise save for:

- (a) any liability of LUL or Infraco that arose prior to the Contract Disposal Date (but not from the Mandatory Sale itself or from a breach of the Contract Disposition Agreement) that has not been taken into account in the calculation of the formula in the DCF Amount in determining the Underpinned Amount; and
- (b) any liability of Infraco to pay any amount to LUL or LUL to pay any amount to Infraco under the Contract Disposition Agreement.

### Interim Payment

41.6B If:

- (a) completion of a Contract Disposition Agreement does not take place within the relative time period stipulated in clause 41.5 (Sale to LUL Nominee) and provided that Infraco has executed the Contract Disposition Agreement and all other documentation as may be requested by LUL acting reasonably to enable completion of the Contract Disposition Agreement without further act on the part of Infraco (unless such documentation has not been presented to Infraco in a form which complies with clause 41.5 (Sale to LUL Nominee) and/or Infraco has not been given a reasonable opportunity to verify such compliance and execute such documentation):
  - (i) LUL shall pay (for itself or on behalf of any LUL Nominee) to Infraco an amount equal to the amount of the price fixed pursuant to clause 41.5 (Sale to LUL Nominee) and calculated as if the expiry of the relative time period (the Interim Payment Date) was the Contract Disposal Calculation Date;
  - (ii) LUL shall make the payment referred to in sub-clause (a) above on the Interim Payment Date;
  - (iii) Clause 3.4 to 3.9 inclusive of the Contract Disposition Agreement shall apply, provided all references to the Contract Disposal Date in those clauses shall be deemed to be references to the Interim Payment Date; and
  - (iv) any amount paid by LUL (for itself or on behalf of any LUL Nominee) to Infraco pursuant to (i), (ii) and (iii) of this clause 41.6B(a) shall be deducted from the "Novation Price" payable by the "Transferee" pursuant to (and as defined in) the terms of the Contract Disposition Agreement; or
- (b) completion of a Contract Disposition Agreement does take place with an LUL Nominee within the relative time period stipulated in clause 41.5 (Sale to LUL Nominee) and such LUL Nominee fails to make any payment to Infraco pursuant to the Contract Disposition Agreement, then promptly upon written demand from Infraco LUL shall pay (for itself or on behalf of any LUL Nominee) to Infraco an amount equal to that which the LUL Nominee is required to pay to Infraco pursuant to such Contract Disposition Agreement on completion thereof.

**Set-off**

41.6C Subject to clauses 41.6D and 41.6E, no abatement, deduction, counterclaim, withholding or set-off may be made from any payments due under this clause 41 (Mandatory Sale) to the extent such abatement, deduction, counterclaim, withholding or set-off would have the effect that:

- (a) the amount paid under clause 41.6B where calculated in accordance with clause 41.5(a) (Sale to LUL Nominee) after taking into account any abatement, deduction, counterclaim, withholding or set-off would be less than the aggregate of the 95% Amount and any additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax)) which would be payable under clause 41.13 by reference to the 95% Amount as determined upon the assumptions and bases set out in clause 41.13(d) (Tax);
- (b) the amount paid under clause 41.6B where calculated in accordance with clause 41.5(b) or (d) (Sale to LUL Nominee) (as applicable) after taking into account any abatement, deduction, counterclaim, withholding or set-off would be less than the aggregate of the Approved Debt and the Approved Mezzanine Debt and any additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax)) which would be payable under clause 41.13 by reference to the aggregate of the Approved Debt and the Approved Mezzanine Debt as determined upon the assumptions and bases set out in clause 41.13(d) (Tax), in each case as at the Contract Disposal Calculation Date;
- (c) the amount paid under clause 41.6B after taking into account any abatement, deduction, counterclaim, withholding or set-off where:
  - (i) the circumstances in paragraph 10.3 (Special Mandatory Sale) of Schedule 1.9 (The Statutory Arbitrator and Reviews) apply, would be less than the lower of:
    - (aa) the aggregate of Approved Debt and Approved Mezzanine Debt and any additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax)) which would be payable under clause 41.13 by reference to the aggregate of the Approved Debt and the Approved Mezzanine Debt as determined upon the assumptions and bases set out in clause 41.13(d) (Tax); and
    - (bb) the Special Mandatory Sale Amount relating to paragraph 10.3 (Special Mandatory Sale) of Schedule 1.9 (The Statutory Arbitrator and Reviews), or
  - (ii) the circumstances of any of clauses 41.1(f), 41.1(g), 41.2(c) (in so far as it relates to clause 41.1(f)), 41.2(d) or 41.2(e) apply would be less than the aggregate of the Approved Debt and the Approved Mezzanine Debt and any additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax)) which would be payable under clause 41.13 by reference to the aggregate of the Approved Debt and the Approved Mezzanine Debt as determined upon the assumptions and bases set out in clause 41.13(d) (Tax),

in each case as at the Contract Disposal Calculation Date;
- (d) the amount paid under clause 41.6B after taking into account any abatement, deduction, counterclaim, withholding or set-off where the circumstances in

paragraph 10.4 (Special Mandatory Sale) of Schedule 1.9 (The Statutory Arbitrator and Reviews) applies would be less than the aggregate of:

- (i) the amount of the Approved Debt as at the Contract Disposal Calculation Date less the value of One Year's Margin;
- (ii) any amount referred to in paragraph 10.4(b)(i) of Schedule 1.9 (The Statutory Arbitrator and Reviews); and
- (iii) any additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax)) which would be payable on the amount in (i) above as determined upon the assumptions and bases set out in clause 41.13(d) (Tax),

in each case, as at the Contract Disposal Calculation Date; or

- (e) the amount paid under clause 41.3(c) (Sale Process) after taking into account any abatement, deduction, counterclaim, withholding or set-off would, when aggregated with the amount payable by the Permitted Transferee in the circumstances of clause 41.3 (Sale Process), be less than the aggregate of the 95% Amount and any additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax)) which would be payable under clause 41.13 by reference to the 95% Amount as determined upon the assumptions and bases set out in clause 41.13(d) (Tax).

41.6D This clause 41.6D shall apply in any circumstances when the following amounts are payable:

- (a) the amount calculated in accordance with clause 41.5(a) (Sale to LUL Nominee);
- (b) the amount payable where the circumstances in paragraph 10.4 (Special Mandatory Sale) of Schedule 1.9 (The Statutory Arbitrator and Reviews) apply; or
- (c) the amount payable under clause 41.3(c) (Sale Process), together with the amount payable by the Permitted Transferee in the circumstances of clause 41.3 (Sale Process).

When this clause 41.6D applies if the DCF Amount calculated without applying the proviso appearing at the end of the definition of that term would have exceeded the aggregate of one hundred per cent. (100%) of the Approved Debt and one hundred per cent. (100%) of the Approved Mezzanine Debt (such excess being referred to as the DCF Excess) then any abatement, deduction, counterclaim, withholding or set-off amount which LUL might otherwise be entitled to make from any payments due under this clause 41 (Mandatory Sale) shall be reduced by the amount of the DCF Excess.

41.6E In respect of any amounts payable by LUL pursuant to clause 41.3(b), 41.3(c), 41.5 (e) or 41.6B (each a "Relevant Amount"), such Relevant Amounts shall be subject to a further deduction equal to any amounts accruing to Infracore which are credited to accounts which are not subject to the security created by the LUL Charge (other than any amounts which are the proceeds of a Mandatory Sale standing to the credit of an account which is an Excluded Account (as defined in the LUL Charge)) provided that such deduction shall only apply to the extent that the Relevant Amount after such deduction (or in the case of a payment by LUL pursuant to clause 41.3(c) the aggregate of the Relevant Amount after such deduction and the amount payable by the Permitted Transferee under such clause) is not less than the aggregate of the 95% Amount and the best estimate that can be made as at the Contract Disposal Calculation Date of any

additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax) which would be payable under clause 41.13 by reference to the 95% Amount as determined upon the bases and assumptions set out in clause 41.13(d) (Tax).

### **Handback plans**

41.7 On and after service of a Mandatory Sale Notice, the parties will comply with the provisions of Schedule 5.6 (*Handback*).

### **Further Acts/Attorneys**

41.8 Infraco shall, at its own cost and expense, from time to time execute and do all such assurances, deeds, acts and things and provide such information as LUL or an LUL Nominee may reasonably request once LUL has served notice upon Infraco pursuant to clause 41.1 (*Mandatory Sale activation by LUL*). For the purpose of securing the performance of Infraco's obligations to LUL under clause 41.6(a) (*Process of sale to LUL Nominee*), this clause 41.8 and clause 41.9 (*Suspension of Infraco services*), Infraco irrevocably and by way of security appoints LUL to be its attorney (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments) on behalf of Infraco and in its name or otherwise, to execute any document or do any act or thing which LUL (or its substitutes or delegates) may, in its or their absolute discretion (which exercise of power by LUL (or its substitutes or delegates) may be relied on by third parties as an absolute discretion without further enquiry but which exercise of power by LUL (or its substitutes or delegates), as between LUL and Infraco shall be exercised in accordance with clause 16.1 (*Co-operation*))(and in the case of substitutes or delegates, as if they were party to the Contract and obliged to act in accordance with clause 16.1 hereof), consider appropriate for the performance of Infraco's obligations under clause 41.6(a) (*Process of sale to LUL Nominee*), this clause 41.8 and clause 41.9 (*Suspension of Infraco services*) only (but not for the purposes of exercising any rights of Infraco in relation to any agreement as to any amount payable in connection with any Mandatory Sale); and without prejudice to the generality of its power to appoint substitutes and to sub-delegate, any person appointed the substitute of LUL shall, in connection with the exercise of the said power of attorney, be the agent of Infraco.

### **Suspension of Infraco services**

41.9 If on or at any time following service of a Mandatory Sale Notice LUL reasonably considers that it is necessary to ensure the reliable operation of the Infraco Network to a level which meets the needs of Customers to take control of the Infraco Network, then LUL may, by notice in writing having immediate effect, suspend performance by Infraco of all or any part of the Services and procure a third party (the Substitute) to perform the Services. In such event Infraco shall co-operate in the exercise by LUL of such rights, including such use of the Assets (other than those Assets referred to in paragraphs 1.2(c), (e) and (f) of Schedule 5.9 (*Key System Assets*) and any amounts receivable by Infraco under the Contract, the Contract Disposition Agreement or the Transfer Scheme) and Infraco Staff as may be reasonably required by the Substitute and if requested by LUL, Infraco shall transfer to, or vest in, as the case may be, such third party its interests in the Assets in compliance with the provisions of paragraphs 10.1 to 10.3 of Schedule 5.9 (*Key System Assets*).

41.10 Where LUL has suspended performance by Infraco of all or any part of the Services pursuant to clause 41.9 (*Suspension of Infraco services*), then:

- (a) LUL shall be entitled to reduce the ISC which would otherwise be payable by LUL to Infraco by an amount equal to the sum necessary to compensate the

Substitute for all reasonable costs (including but not limited to reasonably allocated overheads, internal costs and a reasonable profit element) incurred by the Substitute in respect of the Services that it is undertaking which Infraco would have been obliged to perform had LUL not suspended Infraco's performance; and

- (b) to the extent that the Substitute fails to carry out its activities in accordance with Good Industry Practice, any cost which would otherwise fall into the definition of Rectification Costs shall not do so to the extent that the condition of the Assets is worse at the Contract Disposal Calculation Date than they were at the date of the substitution or to the extent that such costs arise because progress of work in respect of the Assets or in respect of a Specified Line Upgrade deteriorates following the date of the substitution.

41.11 Any transfer of the Assets required by clause 41.9 (*Suspension of Infraco services*) shall be without prejudice to the provisions of clauses 41.3 (*Sale to LUL Nominee*) or 41.5 (*Sale process*) as the case may be, and any Contract Sale shall be made on the basis that the Substitute shall and LUL shall procure that the Substitute executes and does all such assurances, deeds, acts and things and provides such information as may be reasonably required to complete such Contract Sale, including to transfer the Assets to a Permitted Transferee or, as the case may be an LUL Nominee on completion of such Contract Sale.

41.12 LUL may at any time modify or revoke any suspension of performance pursuant to clause 41.9 (*Suspension of Infraco services*) and any such suspension shall automatically be fully revoked on completion of a Contract Sale.

## **Tax**

### 41.13

- (a) If (or, in the case of the Special Mandatory Sale Amount, to the extent that) the amount of the Consideration (which for the purposes of this clause 41.13 shall not include any additional amount payable under this clause 41.13 and shall not take into account any adjustment under clause 41.14) is an amount calculated by reference to the 95% Amount in accordance with paragraph (b) of the definition of the Underpinned Amount pursuant to clause 41.5(a) (*Sale to LUL Nominee*) above, or by reference to the amount of element (a), or the amount of the Approved Mezzanine Debt under element (b), of the Special Mandatory Sale Amount in paragraph 10.4 of Schedule 1.9 (*The Statutory Arbiter and Reviews*) or by reference to the amount of the Approved Debt and the Approved Mezzanine Debt under element (a) and (b) of the Special Mandatory Sale Amount in paragraph 10.3 of Schedule 1.9 (*The Statutory Arbiter and Reviews*), or by reference to the aggregate of the Approved Debt and Approved Mezzanine Debt pursuant to clause 41.5(b) (*Sale to LUL Nominee*) above, or by reference to the Corrupt Gifts and Safety Breach Disposition Price pursuant to clause 41.5(d) (*Sale to LUL Nominee*) above, or by reference to the Extraordinary Mandatory Sale Price pursuant to clause 41.5(e) (*Sale to LUL Nominee*) above, the Consideration shall be increased in the event that Infraco incurs any liability for Taxation in respect of the Consideration, so as to ensure that the net amount received by the Infraco (after account is taken of the Taxation consequences of the increased payment) is equal, based on the following provisions of this clause 41.13 (*Tax*), to the full amount which would have been received by it had no such liability to Taxation been incurred. For the avoidance of doubt, the provisions of this clause 41.13 (*Tax*) shall not apply if (or, in the case of the Special Mandatory Sale Amount, to the extent that) the Consideration is calculated by reference to paragraph (a) of the definition of the Underpinned

Amount pursuant to clause 41.5(a) (*Sale to LUL Nominee*) above, or by reference to the Estimated Fair Value of the Contract pursuant to clause 41.5(b) (*Sale to LUL Nominee*) above or by reference to the Special Mandatory Sale Amount other than to the extent referred to above in this clause 41.13(a). If it is uncertain as to the extent to which a liability of Infraco to Taxation is in respect of the elements of the Special Mandatory Sale Amount to which the provisions of this clause 41.13 shall apply (for this clause 41.13(a), the Included SMSA) and to which the provisions of this clause 41.13 shall not apply, then, in calculating the amount of the liability of Infraco to Taxation in respect of the Included SMSA, the liability of Infraco to Taxation in respect of the Special Mandatory Sale Amount shall be calculated in accordance with this clause 41.13 and the amount of the liability of Infraco to Taxation in respect of the Included SMSA shall be the total Taxation in respect of the Special Mandatory Sale Amount multiplied by the fraction of which the Included SMSA is the numerator and the Special Mandatory Sale Amount is the denominator.

- (b) In this clause 41.13 and clause 41.14 the expression Taxation means:
- (i) any liability to corporation tax of the United Kingdom;
  - (ii) the loss or use of any loss, relief, allowance, exemption, set-off or deduction in computing, or against, profits, income or gains of any description or from any source for the purposes of corporation tax of the United Kingdom save where such loss, relief, allowance etc. is derived from Infraco's involvement in PPP (for the purposes of this clause 41.13 and clause 41.14, the Project).
- (c) Infraco shall keep LUL fully informed of all negotiations with the Inland Revenue relating to any liability for Taxation in respect of the Consideration. Infraco shall not agree, accept or compromise any claim or issue or dispute relating to such liability without the prior written consent of LUL which shall not be unreasonably withheld or delayed. LUL may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct Infraco to resist, appeal, defend or otherwise dispute any assessment relating to its liability for Taxation in respect of the Consideration and the costs of any such dispute shall be at LUL's expense. However, if Infraco obtains at its own expense professional advice from a person with relevant expertise that any resistance, appeal, defence or other mode of disputation is not likely to result in any diminution of the liability to Taxation, Infraco need not continue such resistance, appeal, defence or other mode of disputation unless the costs thereof are thereafter borne by LUL. Where a dispute is prosecuted and results in a diminution in Infraco's liability for taxation, an adjustment shall be made between the parties to reflect the outcome of the dispute.
- (d) The increased amount which is payable under clause 41.13(a) shall be determined upon the following assumptions and bases:
- (i) the Project comprises the sole trade and business of Infraco, which trade shall cease to be carried on by Infraco on the Contract Disposal Date;
  - (ii) no other company shall be treated for the purposes of section 343 Taxes Act as beginning to carry on the trade referred to in (i) above;
  - (iii) the Assets comprise the sole assets and equipment of Infraco;

- (iv) full account shall be taken of any unrelieved trading losses or other reliefs derived from the Project which can be set off against, or against Taxation in respect of, the Consideration;
  - (v) losses or other amounts eligible for relief from corporation tax derived from the Project which have been surrendered by Infraco by way of group relief or consortium relief other than to LUL or anyone connected with LUL shall be assumed for these purposes not to have been surrendered and to remain available as carried forward trading losses or other reliefs;
  - (vi) Infraco shall make all such claims and elections, or shall refrain from making such claims and elections, as may be reasonably necessary to reduce to the greatest extent possible the increased amount which is payable under clause 41.13(a); and
  - (vii) account shall be taken so far as relevant of timing of differences between the time of payment under clause 41.13(e) and the time when Taxation in respect of the Consideration is treated as becoming due and payable under the relevant Legislation.
- (e) The additional payment under clause 41.13(a) shall be made nine months after the end of Infraco's accounting period for which Infraco's liability for Taxation in respect of the Consideration arises, subject to the provision, at least four weeks in advance, of evidence in sufficient detail for LUL to satisfy itself of the basis on which such liability has been calculated. However, if and to the extent that the liability is reduced by a claim, loss or relief which is not derived from the Project then payment will be made when and to the extent that the surrendering company or Infraco as the case may be first makes a payment of Taxation which would not otherwise have been made.
- (f) Any payments due under clause 41.13(a) shall only be made if LUL is satisfied that arrangements are in place to ensure that the additional amount paid by LUL pursuant to clause 41.13(a) representing the liability for Taxation in respect of the Consideration, along with any amount paid by LUL representing the liability for Taxation in respect of any such additional payment, will be paid to and retained by the Inland Revenue or will be used to reimburse any person who has made such payment to the Inland Revenue to the extent that the amount paid has been retained by the Inland Revenue.

#### 41.14

- (a) If the amount of the Consideration (which for the purposes of this clause 41.14 shall not include any additional amount payable under clause 41.13 (*Tax*) and shall not take into account any adjustment under this clause 41.14) is an amount calculated by reference to the Estimated Fair Value of the Contract pursuant to clause 41.5(b) (*Sale to LUL Nominee*) above, the Consideration shall be increased or, as the case may be, decreased in accordance with the following provisions of this clause 41.14. For the avoidance of doubt, (A) the provisions of this clause 41.14 shall not apply if the Consideration is calculated by reference to the Underpinned Amount pursuant to clause 41.5(a) (*Sale to LUL Nominee*) above, by reference to the Approved Debt and Approved Mezzanine Debt pursuant to clause 41.5(b) (*Sale to LUL Nominee*) above, by reference to the Special Mandatory Sale Amount pursuant to clause 41.5(c) (*Sale to LUL Nominee*), by reference to the Corrupt Gifts and Safety Breach Disposition Price pursuant to clause 41.5(d) or by reference to the Extraordinary Mandatory Sale Price pursuant to clause 41.5(e) (*Sale to LUL Nominee*), and (B) (*Sale to LUL*

*Nominee*) the calculation and payment of the adjustment under this clause 41.14 shall not prejudice the amount or date for payment of the Consideration pursuant to the provisions of clause 41.5(b) (*Sale to LUL Nominee*) above prior to the adjustment pursuant to this clause 41.14.

- (b) Infraco and LUL (for the purposes of this clause 41.14, each a Party and together the Parties) shall endeavour to agree:
- (i) the assumed liability for Taxation of Infraco in respect of the Consideration (the Consideration Taxation);
  - (ii) the date or dates on which payment is due in respect of the Consideration Taxation; and
  - (iii) the Net Present Value (as that term applies for the purposes of calculating components A and B of the Estimated Fair Value of the Contract) of the Consideration Taxation (the First Taxation Amount).
- (c) The Parties shall also endeavour to agree a financial model (the Taxation Model) for the period from and including the Contract Disposal Calculation Date to and including the Expiry Date, with the purpose of estimating the amounts (if any) of the liability for Taxation of Infraco in respect of that period (the Future Taxation). The Taxation Model shall be prepared in accordance with the following assumptions and bases:
- (i) a Contract Sale does not take place and the Contract does not come to an end before the Expiry Date, and instead the Infraco continues to carry out its obligations under this Contract (without prejudice to the calculation of component A of the Estimated Fair Value of the Contract) until the Expiry Date;
  - (ii) the amounts taken into account in calculating the Net Present Value for the purposes of component A and the amounts taken into account in calculating component D of the definition of Estimated Fair Value of the Contract, to the extent they would be paid in the form of ISC, are paid to the Infraco on the date due and all costs taken into account in calculating the Net Present Value within components B and E and in calculating component C of the definition of Estimated Fair Value of the Contract will be incurred when they were due to be incurred (and such amounts are accounted for on the assumptions set out in (i) and (vi) of this paragraph (c));
  - (iii) Infraco obtains relief for the purposes of Taxation, including in respect of the costs taken into account within components B, C and E of the definition of the Estimated Fair Value of the Contract, in such amounts and at such times as the Parties agree is likely to be obtained;
  - (iv) the only receipts and expenditure of Infraco are those amounts referred to in clauses 41.14(c)(ii) and (iii) above;
  - (v) the system of corporation taxation (including for the avoidance of doubt the interpretation and application of that system and the published practice of any taxing or other authority within the United Kingdom competent to impose any liability to tax) as this applies to Infraco does not change after the Contract Disposal Calculation Date except any changes that were published on or prior to the Contract Disposal

Calculation Date and the Parties agree are more likely than not to come into effect;

- (vi) the accounting policies, tax reporting practices and the length of the accounting periods of Infraco are the same for each period ending after the Contract Disposal Calculation Date as they were for the last period ending on or before the Contract Disposal Calculation Date, taking into account only any change of law or generally accepted accounting practice which was published before the Contract Disposal Calculation Date but which comes into effect for periods ending after the Contract Disposal Calculation Date and which the parties agree is more likely than not to come into effect;
  - (vii) the Project comprises the sole trade and business of Infraco, which trade shall cease to be carried on by Infraco on the Expiry Date;
  - (viii) no other company shall be treated for the purposes of section 343 Taxes Act as beginning to carry on the trade referred to in (vii) above;
  - (ix) the Assets comprise the sole assets and equipment of Infraco;
  - (x) full account shall be taken of any unrelieved trading losses or other reliefs derived from the Project (including, for the avoidance of doubt, reliefs referred to in clause 41.14(c)(iii)) which can be set off against, or taken into account in reducing, the amount of Future Taxation;
  - (xi) losses or other amounts eligible for relief from corporation tax derived from the Project which have been surrendered by Infraco by way of group relief or consortium relief shall be assumed for these purposes not to have been surrendered and to remain available as carried forward trading losses or other reliefs; and
  - (xii) Infraco shall make all such claims and elections, or shall refrain from making such claims and elections, as may be reasonably necessary to reduce to the greatest extent possible the amount of Future Taxation.
- (d) The Parties shall then endeavour to agree the Net Present Value (as that term applies for the purposes of calculating components A and B of the Estimated Fair Value of the Contract) of each amount of Future Taxation. The aggregate of the amounts of Net Present Value calculated in accordance with this clause 41.14(d) shall be the Second Taxation Amount.
- (e) If the Parties are unable to agree by the date falling sixty (60) days after the Contract Disposal Calculation Date any amount in accordance with clauses 41.14(b) to (d) above or the amount of the payment due under clause 41.14(k) below, the Parties shall endeavour to agree a person who is willing to act, and whom they would consider suitable to act, as an independent expert (for the purposes of this clause 41.14, the Tax Expert). In the event of the Parties failing to agree a person willing and suitable to act as the Tax Expert within seventy (70) days of the Contract Disposal Calculation Date, either Party may apply (and the Parties may together apply before that time) to the President for the time being of the Institute of Chartered Accountants of England and Wales (the Institute) for an independent accountant of appropriate standing to be appointed. In acting pursuant to this clause, the Institute and its employees and agents shall not be liable to either Party for any act or omission in so acting, save where the act or omission is shown by the Party to constitute conscious and deliberate

wrongdoing committed by that person and if (notwithstanding such exclusion of liability) that person should be held liable in respect of actions undertaken pursuant to this clause 41.14 to any third person, the Parties shall hold harmless and indemnify that person in full (including reasonable legal costs) save where conscious and deliberate wrongdoing, committed by that person, is shown. The terms of remuneration of the Tax Expert shall be agreed by the Parties and the Tax Expert as soon as is reasonable practicable. If either Party (but not both Parties) rejects the terms of the remuneration of the Tax Expert, the same shall be settled (and binding upon the Parties) by agreement between the President for the time being of the Institute and the Tax Expert (provided that the level of the Tax Expert's fees shall not exceed the level originally proposed to the Parties by the Tax Expert). If all the Parties reject the terms of remuneration proposed by the Tax Expert another person shall be appointed as Tax Expert in accordance with this clause 41.14.

- (f) The procedures to be adopted by the Tax Expert shall be in accordance with Schedule 3 of the Dispute Resolution Agreement, which shall be read subject to the following amendments:
- (i) references therein to "the Adjudicator" shall be references to "the Tax Expert";
  - (ii) references therein to "the Dispute" shall be references to "the calculation of amounts under this clause 41.14";
  - (iii) references therein to a "party" or the "parties" shall be references to a "Party" and the "Parties" respectively;
  - (iv) the first sentence of paragraph 3 of Schedule 3 shall be replaced with the following:
 

"Within seven days from the date of receipt of the Notice of Appointment the Parties shall submit to the Tax Expert a written summary of those amounts, if any, that are agreed between the Parties in accordance with clauses 41.14(b) to (d) above and of those facts/relevant to the determination of any such amount, if any, that are agreed between the Parties; and within fourteen (14) days from the date of receipt of the Notice of Appointment, Infraco may make one written submission to the Tax Expert; and within twenty one (21) days from the date of receipt of the Notice of Appointment LUL may make one written submission to the Tax Expert."
  - (v) paragraph 5(e) and paragraphs 10 and 11 of Schedule 3 shall not apply; and
  - (vi) the reference to "the Agreement or this Schedule 3" in paragraph 5(d) shall be a reference to "the Agreement or this Schedule 3 each as amended or modified by clause 41.14" and the references to "this Schedule 3" in paragraphs 6 and 9 shall be references to "this Schedule 3 as amended or modified by clause 41.14".
- (g) No later than the sixtieth (60th) day from the date of the Notice of Appointment, the Tax Expert shall give written notice of his decision to the Parties. The Tax Expert shall act as expert and not as arbitrator and the Tax Expert's decision shall be final and binding upon the Parties and the Tax Expert. Notice of the Tax

Expert's decision shall include a summary of the Tax Expert's findings and, if agreed by the Parties, a statement of the reasons for his decision. If the Tax Expert is unable or otherwise fails to give written notice of his decision in accordance with this clause 41.14(g) by the end of the sixtieth (60th) day from the date of the Notice of Appointment and unless the Parties agree to extend the time available to the Tax Expert to give his decision an alternative person shall be appointed in accordance with clause 41.14(e) above and the provisions of this clause 41.14 shall apply as if the alternative person appointed was the Tax Expert.

- (h) LUL or Infraco may apply to any appropriate court for enforcement of the Tax Expert's decision.
- (i) The costs and fees (including, for the avoidance of doubt, the remuneration and expenses of the Tax Expert) of the determination shall be borne equally between the Parties.
- (j) The Tax Expert shall determine:
  - (i) the amount of the Consideration Taxation in accordance with clause 41.14(b)(i);
  - (ii) the date or dates on which payment is due in respect of the Consideration Taxation in accordance with clause 41.14(b)(ii);
  - (iii) the First Taxation Amount in accordance with clause 41.14 (b)(iii);
  - (iv) (by producing the Taxation Model in accordance with clause 41.14(c)) the amounts of, and the date or dates on which payment is due in respect of, the Future Taxation;
  - (v) the Second Taxation Amount in accordance with clause 41.14(d); and
  - (vi) the amount by which the First Taxation Amount exceeds or, as the case may be, is less than the Second Taxation Amount.
- (k) If the First Taxation Amount exceeds the Second Taxation Amount, LUL shall procure the payment by or on behalf of the LUL Nominee, by way of adjustment to the Consideration of such amount as when added to the Consideration and after taking into account any change in liability for Taxation as a result of the adjustment to the Consideration leaves Infraco with an amount equivalent to the Consideration (before adjustment) and the excess of the First Taxation Amount over the Second Taxation Amount. If the Second Taxation Amount exceeds the First Taxation Amount, Infraco shall pay to the LUL Nominee, by way of adjustment to the Consideration, such amount as when added to the Consideration and after taking into account any change in liability for Taxation as a result of the adjustment to the Consideration leaves Infraco with an amount equivalent to the Consideration (before adjustment) less the excess of the Second Taxation Amount over the First Taxation Amount.
- (l) The payment pursuant to clause 41.14(k) shall be made within fifteen (15) Business Days of the date on which the Parties agree the amount due under that clause or, as the case may be, the Tax Expert gives written notice of his decision pursuant to clause 41.14(g) above together with interest from the Contract Disposal Calculation Date to the date of actual payment at the Applicable Rate.

**Rule against perpetuities**

41.15 If (but for this clause 41.15) any term of this clause 41 is such as to cause the whole or any part of this Contract or its implementation to be void or voidable for perpetuity then:

- (a) the perpetuity period applicable to this Contract for the purpose of clause 41 shall be twenty-one (21) years; and
- (b) Infraco shall not be entitled to serve a Mandatory Sale Notice on LUL under clause 41.2 (*Mandatory Sale activation by Infraco*) on or after the twenty-first anniversary of the Start Date; and
- (c) LUL shall not be entitled to serve a Mandatory Sale Notice on Infraco under clause 41.1 (*Mandatory Sale activation by LUL*) on or after the twenty-first anniversary of the Start Date,

PROVIDED THAT Infraco may request within ninety (90) days of receiving Restated Terms (or being deemed to have received notice that the existing terms continue to apply in accordance with paragraph 2.3 of Schedule 1.9 (*The Statutory Arbiter and Reviews*)) for the Review Period commencing on the Second Review Date and/or the Third Review Date that LUL include, as part of the Restated Terms, contractual terms to enable the arrangements contemplated by clause 41 (and to the extent necessary any other parts of the Contract) (the 41.15 Terms) to be capable of effective implementation until the Expiry Date. LUL is under no obligation to propose such terms, but if it does not do so within thirty (30) days of Infraco's request, then Infraco may propose such contract terms and in such case such terms shall be treated as part of the Restated Terms. For the avoidance of doubt, any terms proposed by LUL or Infraco in accordance with this clause 41.15 shall not amount to new obligations or increased risk for the purposes for Schedule 1.9 of the Contract (*The Statutory Arbiter and Reviews*).

**Net Present Value**

41.16 For the purposes of paragraph (c) of the definition of "Net Present Value" in the Master Definitions Agreement, the rate is 13.1%.

**SCHEDULE 6****PART I: CLAUSE 57.1**

57.1 Subject to clause 57.3, Infraco shall not purport to assign, transfer, charge or otherwise deal with the Contract (or any or all of its rights or obligations under the Contract) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of LUL, provided that LUL shall not withhold such consent if such assignment, transfer or charge is in respect of amounts receivable under the Contract and is entered into by Infraco by way of security which is expressly subject to the limitations in the Contract, and Infraco shall not purport to assign, transfer, or charge the Infraco Leases or Depot Sub-leases to Infraco, or any premises demised by each or any of them, other than as permitted by and in accordance with clauses 57.1A to 57.1E below.

**PART II: CLAUSE 57.3**

57.3

(a) LUL is hereby notified that Infraco has assigned by way of security all of its right, title, interest and benefit, present and future, in, to and under this Contract to the Borrower Security Trustee, that the beneficiaries (other than the Issuer) of the rights held by the Borrower Security Trustee have assigned their beneficial interest to the Issuer and that the Issuer as sole beneficiary of the rights held by the Borrower Security Trustee pursuant to the assignment referred to above has subsequently assigned, by way of security, all of its right, title, interest and benefit, present and future, in, to and under this Contract to the Issuer Security Trustee;

(b) LUL agrees that it shall, pursuant to the assignments referred to in paragraph (a) above and subject to paragraphs (d) and (e) (but without prejudice to its rights under clause 41.13(f) of this Contract), pay all sums payable by LUL under clauses 41.2A, 41.3, 41.3A, 41.5(e), 41.6B, 41.13 and 41.14 of this Contract (and shall procure that any payments due to Infraco in the event of a Contract Sale to an LUL Nominee shall be paid) directly to the Issuer Security Trustee into a bank account nominated for the purpose by the Issuer Security Trustee; and

(c) LUL acknowledges as at the date hereof that it has been notified of the assignments referred to in paragraph (a) above and that it has not received any other notice relating to the assignment of Infraco's rights under this Contract; and

(d) LUL agrees that it shall, subject to paragraph (e) (and without prejudice to its rights under clause 41.13(f) of this Contract), following the exercise of the Option and the payment by LUL of the Put Option Price (in each case as defined in and pursuant to the Put Option Agreement) (together with interest thereon calculated in accordance with clause 3.1, any interest calculated in accordance with clause 21 and any amounts payable pursuant to clause 8 (in each case of the Put Option Agreement)) in full to the Issuer Security Trustee, pay all sums payable by LUL under clauses 41.2A, 41.3, 41.3A, 41.5(e), 41.6B, 41.13 and 41.14 of this Contract (and shall procure that any payments due to Infraco in the event of a Contract Sale to an LUL Nominee shall be paid) directly to the Borrower Security Trustee into a bank account nominated for the purpose by the Borrower Security Trustee; and

(e) LUL agrees (without prejudice to its rights under clause 41.13(f) of this Contract) that following the release of the Borrower Deed of Charge and the Issuer Deed of Charge (each as defined in the Put Option Agreement), pay all sums payable by LUL under clauses 41.2A, 41.3, 41.3A, 41.5(e), 41.6B, 41.13 and 41.14 of this Contract (and shall

procure that any payments due to Infraco in the event of a Contract Sale to an LUL Nominee shall be paid) directly to Infraco.

57.4 Any payments made to the Issuer Security Trustee or Borrower Security Trustee under clauses 57.3 (b) or (d) as the case may be in respect of amounts payable by LUL under clauses 41.2A, 41.3, 41.3A, 41.5(e) and 41.6B shall (save to the extent that the relevant amount has already been set off from the ISC by LUL pursuant to clause 41.2A) discharge LUL's payment obligations to Infraco pro tanto.

57.5 Any payments made to the Issuer Security Trustee or the Borrower Security Trustee under this clause 57 which is otherwise an amount due to be paid to Infraco shall be deemed to be received by Infraco when received by the Issuer Security Trustee or Borrower Security Trustee.

For the purposes of clauses 57.3, 57.4 and 57.5:

**Borrower Security Trustee** means The Law Debenture Intermediary Corporation p.l.c. and includes any person or company for the time being acting as borrower security trustee under Infraco's debt financing arrangements; and

**Issuer Security Trustee** means The Law Debenture Trust Corporation p.l.c. and includes any person or company for the time being acting as issuer security trustee under Infraco's debt financing arrangements.

#### **PART III: CLAUSE 63.3**

63.3 Other than as set out in clauses 63.5 and 63.6, a person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### **PART IV: CLAUSES 63.5/63.6**

63.5 The Issuer Security Trustee shall be entitled to enforce its rights under clauses 57.3(b) and 63.7 under the Contracts (Rights of Third Parties) Act 1999.

63.6 The Borrower Security Trustee shall be entitled to enforce its rights under clauses 57.3(d) and 63.8 under the Contracts (Rights of Third Parties) Act 1999.

63.7 Clauses 63.3 and 63.5 may not without the prior written consent of the Issuer Security Trustee be varied.

63.8 Clauses 63.3 and 63.6 may not without the prior written consent of the Borrower Security Trustee be varied.

**SCHEDULE 7**

**SCHEDULE 1.9 TO THE AMENDED AND RESTATED SERVICE CONTRACT**

**PART 1: PARAGRAPH 1.5**

*ISC requirements*

1.5 This paragraph refers to:

- (a) the best estimate (that is, the most likely outcome) of amounts and times of payment and receipt of each of the cashflows:
  - (i) as referred to in paragraph 7 below; or
  - (ii) as subsequently adjusted pursuant to the exercise of an LUL Option referred to in paragraph 9 below,

on the basis (in relation to paragraph 7.2(b)) that the aggregate of all the amounts allowed in respect of the operating and capital costs of a Notional Infraco after the Review Date shall be the best estimate of such amounts as would be agreed to by a Notional Infraco when entering into a contract after a competitive tendering process in respect of the relevant activities having regard to:

- (x) the risks associated with individual activities (including the risk of cost overruns and ISC Adjustments);
  - (y) the risk that a Notional Infraco may have to undertake activities which it has not expected to have to carry out; and
  - (z) the probability that in the management of a portfolio of activities, the actual cost of some individual activities will exceed the costs allowed, and the actual costs of other individual activities will be less than the costs allowed;
- (b) the ISC to be paid by LUL from the next Review Date on the basis set out in paragraph 7.4 below and such that the negative cashflows (as directed pursuant to paragraph (a) above) are funded by the positive cashflows (as directed pursuant to paragraph (a) above) without the need to draw on other finance. Such ISC to be stated:
    - (i) in semi-annual periods in the form set out in Appendix 1 (*Underlying ISC and Aggregated Usage Projections*) of Schedule 4.1 of the PPP Contract;
    - (ii) in such amounts as to take into account that indexation will be applied to those amounts in accordance with Schedule 4.2; and
    - (iii) separately identifying in respect of each such semi-annual period the aggregate Fixed Amounts for that period used by the Arbiter in the cashflows referred to in paragraph 7 as adjusted to take into account that indexation will be applied to those amounts in accordance with Schedule 4.2;
  - (c) a statement of the amounts allowed by way of fixed amounts and the timing of their payment in respect of any Base Finance, and/or Eligible Finance as the Statutory Arbiter may have directed in the current Review is required pursuant to this paragraph and paragraph 7 below, in the form of a revised version of Annex

3 of this Schedule 1.9 (*Fixed Amounts*) as new terms of the Contract pursuant to section 229(4) of the GLA Act;

(d) a statement of the value of RPIX applicable to the relevant Contract Year which has been used to state the ISC in accordance with paragraph 1.5(b).

**PART 2: PARAGRAPH 1.9***Extraordinary Review*

- 1.9 This paragraph refers to:
- (a) the amount of Net Adverse Effects which Infraco has incurred or will incur upon any contention being made by Infraco that it has incurred (or facts subsist as a result of which it will incur) a Net Adverse Effect in excess of £50 million or any integral multiple of £50 million provided that references to £50 million in this paragraph are not subject to indexation pursuant to Schedule 4.2 (*Indexation*) of the Contract;
  - (b) any reasonable request for ancillary directions to enable factual findings relevant to a direction pursuant to paragraph (a) above to be final, so as to avoid reconsideration if later directions are sought (under this paragraph or paragraph 1.7) about Net Adverse Effects;
  - (c) any contention by Infraco that it has incurred or will incur Net Adverse Effects during the Review Period in excess of the Materiality Threshold;
  - (d) where the Statutory Arbiter has directed in terms of sub paragraph (c) above (or, in relation to sub paragraph (i) below only, where any Extraordinary Review is instigated by LUL pursuant to paragraph 16 below or clause 40.3(d) (*LUL Breaches*) of the Contract), the amount and timing of any adjustments to the level of ISC sufficient for a Notional Infraco:
    - (i) properly to perform its contractual obligations during the remainder of the current Review Period; and
    - (ii) to avoid the need for Infraco to finance any Net Adverse Effect during the then current Review Period as a whole that is in excess of the Materiality Threshold;
  - (e) any contention by Infraco as to restrictions on the scope of contract changes that LUL may propose so as to limit these:
    - (i) (in relation to an Extraordinary Review instigated by LUL pursuant to paragraph 16 below) to ones designed to address shortfalls in contract performance that LUL has experienced and to enable LUL to finance any costs of those changes; or
    - (ii) (in relation to an Extraordinary Review instigated by LUL pursuant to clause 40.3(d) (*LUL Breaches*) of the Contract) to ones designed to remedy the impossibility referred to in that clause; or
    - (iii) (in relation to an Extraordinary Review instigated by Infraco) to ones designed to address affordability considerations raised by the need for LUL to finance Net Adverse Effects in excess of the Materiality Threshold;
  - (f) any contention by LUL, where it has served a Warning Notice in relation to circumstances primarily attributable to matters that are the subject of an earlier notice by Infraco pursuant to paragraph 14 (*Extraordinary Review*), that it is unlikely that any direction pursuant to sub paragraph (c) above will materially

further increase the resources available to Infraco to respond to the Warning Notice over and above those already made available pursuant to paragraph 1.8(b); and

(g) any ancillary direction as to the form and content of the next Periodic Review that may be necessary or desirable to prevent inappropriate double counting of items in both Reviews which by their nature should be taken into account in one review only.

To avoid doubt, the intention of the parties is that any Upfront Benefit, Over Time Benefit or LUL's entitlement to an amount of Benefit accruing from a Refinancing other than the Initial Refinancing shall be calculated and made available to LUL in accordance with the provisions of clause 31.6 of the PPP Contract as an adjustment to the ISC (with such adjustment to the ISC being dealt with in accordance with clause 18 of the PPP Contract) and shall be disregarded for the purposes of this paragraph 1.9.

**PART 3: PARAGRAPH 7****7. Cashflows***Relevant cashflows*

7.1 The cashflows referred to in this paragraph 7 are the negative cashflows referred to in paragraph 7.2 and the positive cashflows referred to in paragraph 7.3, in each case from the Review Date for the remainder of the Contract Period and disregarding:

- (a) negative cashflows in respect of matters to the extent covered by insurance and positive cashflows to the extent of insurance receipts;
- (b) negative cashflows associated with matters to the extent of any ability of Infraco to recover under any provision in the Transaction Documents and Share Purchase Agreement and the positive cashflows to the extent of those recoveries; and
- (c) any negative or positive cashflows in respect of Upfront Benefit, Overtime Benefit or LUL's entitlement to an amount of Benefit accruing from a Refinancing other than the Initial Refinancing.

*Negative cashflows*

7.2 The negative cashflows are:

- (a) the Fixed Amounts and the timing of their payment as set out in Annex 3 of this Schedule 1.9 (*Fixed Amounts*);
- (a/b) the operating and capital costs of a Notional Infraco in performing its activities after the first Review Date in respect of assets classified as Grey Assets on the Transfer Date;
- (b) the other operating and capital costs of a Notional Infraco of performing its activities after the Review Date:
  - (i) including commitment and arrangement fees and premia (in respect of financial guarantee policies) in respect of any liquidity and standby facilities (including, but not limited to, any facility in relation to Reimbursable Law and Safety Change Costs) and in respect of the amounts of finance referred to in sub paragraphs (c) and (d) below;
  - (ii) excluding both VAT or Taxation on, or calculated by reference to, income, profits or gains, subject to sub-paragraph (iii);
  - (iii) including such Taxation as arises as a direct result of a Qualifying Change of Law that is a Discriminatory Change of Tax Law; and
  - (iv) where the parties agree or the Statutory Arbiter directs pursuant to paragraph 1.3 that there has been an increase in risk as described in paragraph 1.3(b)(i) or that Eligible Finance is required, also including costs and fees associated with any termination or prepayment of existing finance arrangements in addition to the costs and fees associated with putting new finance arrangements in place save to the extent that such amounts may be taken into account in calculating the Refinancing Benefits from any refinancing to which such costs and fees relate.

- (c) the amounts to be paid to achieve the Equity Rate of Return as at the Review Date for any Base Equity, and/or Eligible Equity;
- (d) the amounts required to pay interest (including net hedging cashflow) on and repay the principal amount of any Base Debt and/or Eligible Debt;
- (e) the amounts and/or timings of any payments concerning specific activities on which the parties have notified pursuant to paragraph 6.6 their agreement to the Statutory Arbiter (which amounts, timings and activities are then to be disregarded for purposes of sub-paragraphs (a) to (d) above); and
- (f) Net Adverse Effects incurred during the last Review Period in excess of the Materiality Threshold that have not been compensated previously pursuant to an Extraordinary Review.

*Positive cashflows*

7.3 The positive cashflows are:

- (a) the amounts of any Base Finance and/or Eligible Finance;
- (b) not used;
- (c) the amount of any payment which LUL has stated pursuant to paragraph 2.2 it wishes to make upon expiry of the Contract;
- (d) the amount of any increases to be made to the ISC in relation to the Delivery into Service of the Specified Line Upgrades that are not yet Delivered into Service and having a Latest Implementation Date following the Review Date;
- (e) the amounts and/or timings of any receipts concerning specific activities on which the parties have notified pursuant to paragraph 6.6 their agreement to the Statutory Arbiter (which amounts, timings and activities are then to be disregarded for purposes of sub paragraphs (a) to (d) above);
- (f) the effect of indexation pursuant to Schedule 4.2 (*Indexation*); and
- (g) in respect of the first Periodic Review Date only, an amount receivable on the first day of the Second Review Period equal to fifty per cent. (50%) of the Net Gain accruing to any Sponsor with respect to any direct or indirect transfer of interest in Tube Lines (Holdings) Limited to which clause 32.7 (*Change of Control of Infracore*) of the Contract applies together with interest at the Applicable Rate from the date on which the gain arose down to the Review Date.

*Profile of periodic payments*

7.4 The payment obligation to be assumed by LUL such that the negative cashflows (as directed pursuant to paragraph 1.5(a)) are funded by the positive cashflows (as directed pursuant to paragraph 1.5(a)) without the need to draw on other finance is one that requires a payment from LUL to Infracore in each Payment Period from the Review Date or, if later, from the date upon which the Restated Terms take effect pursuant to paragraph 5.5, up to the Expiry Date that is in accordance with the profile for payments that LUL has stated pursuant to paragraphs 2.2 and 4.2 save in respect of any variations in payment attributable to any of the factors referred to in paragraph 7.5.

7.5 The factors referred to in this paragraph are increases in payment attributable to:

- (a) the amount of any increases to be made to the ISC in relation to the Delivery into Service of the Specified Line Upgrades that are not yet Delivered into Service and having a Latest Implementation Date following the Review Date;
- (b) the amount of any payment which LUL has stated pursuant to paragraph 2.1(a) it wishes to make upon expiry of the Contract; and
- (c) indexation in accordance with Schedule 4.2 (*Indexation*).

**PART 4: PARAGRAPH 10**

**10. Special Mandatory Sale**

10.1 The provisions of this paragraph apply either where they are required to apply in accordance with paragraph 9.2A or where:

- (a) the Statutory Arbiter has directed pursuant to paragraph 1.3 above that Base Finance is required and/or that new or varied obligations contained in the Restated Terms:
  - (i) involve an increase in risk for Infraco that is material in the context of Infraco's overall activities pursuant to the Contract; and/or
  - (ii) are such that a Notional Infraco would require Eligible Finance for performance of the Restated Terms from the Review Date; and
- (b) Infraco is not able to procure the Required Finance prior to the Last Financing Date.

10.2 Where this paragraph applies a Mandatory Sale shall be instigated pursuant to clause 41 (*Mandatory Sale*) of the Contract and on the basis set out in paragraph 10.3 or 10.4 below as the case may be.

10.3 Where any of the factors identified in paragraph 10.5 below are present or the Mandatory Sale is to be instigated as a consequence of paragraph 9.2A a Mandatory Sale shall be instigated pursuant to this paragraph and the **Special Mandatory Sale Amount** is to mean the sum (without double counting), calculated as at the Contract Disposal Calculation Date, of:

- (a) the amount of the Approved Debt;
- (b) the amount of the Approved Mezzanine Debt;
- (c) one of the following amounts, as applicable, which shall not be subject to indexation in accordance with Schedule 4.2 (*Indexation*) of the Contract:
  - (i) where a Mandatory Sale occurs as a consequence of the first Periodic Review, £310, 197, 141.00;
  - (ii) where a Mandatory Sale occurs as a consequence of the second Periodic Review, £338, 702, 491.00;
  - (iii) where a Mandatory Sale occurs as a consequence of the third Periodic Review, £192, 064, 361.00,

provided that to the extent that additional Eligible Equity and/or Base Equity is subscribed the figures in sub-paragraphs (ii) or (iii) will be adjusted to include an additional payment which when added to the expected cashflows to additional equity gives the appropriate blended nominal equity and shareholder loan return over the period invested. Such amount shall be recalculated on each subsequent Periodic Review and shall not be subject to indexation.

- (d) any Sellback Costs;

- (e) any Reimbursable Law & Safety Change Costs;
- (f) any Termination Costs;
- (g) to the extent not included in (d) or (e), any Exceptional Amounts, or amounts payable in accordance with Schedule 5.7 (*Non-ISC Invoices*) to the PPP Contracts, either previously agreed with LUL as being due to be paid prior to the Contract Disposal Calculation Date or payable to Infracore under the terms of the Transaction Documents or the Share Purchase Agreement in respect of costs of the Infracore which have not been paid at the Contract Disposal Calculation Date; and
- (h) any Administration Costs,

provided that the Special Mandatory Sale Amount calculated pursuant to this paragraph 10.3 shall never be less than the aggregate of the 95% Amount (the "Base Amount") and the best estimate that can be made as at the Contract Disposal Calculation Date of any additional amount in respect of Taxation (as defined in clause 41.13(b) (Tax)) which would be payable under clause 41.13 by reference to the Base Amount as determined upon the bases and assumptions set out in clause 41.13(d) (Tax)

10.4 Where none of the factors identified in paragraph 10.5 below are present and the Mandatory Sale is not to be instigated pursuant to paragraph 9.2A the **Special Mandatory Sale Amount** is to mean, the sum (without double counting) of:

- (a) the amount of the Approved Debt as at the Contract Disposal Calculation Date less the amount of One Year's Margin;
- (b) the higher of:
  - (i) £65 million, such amount not to be subject to indexation in accordance with Schedule 4.2 (*Indexation*) of the Contract; and
  - (ii) the value determined under paragraph (a) of the definition of Underpinned Amount less the Approved Debt as at the Contract Disposal Calculation Date; and

provided that, if such amount is higher than the aggregate of the amount of the Approved Mezzanine Debt as at the Contract Disposal Calculation Date and any additional amount in respect of Taxation (as defined in clause 41.13(b) of the PPP Contract) which would be payable on the Approved Mezzanine Debt as determined upon the assumptions and bases set out in clause 41.13(d) of the PPP Contract, then the amount payable under this paragraph (ii) shall be the Approved Mezzanine Debt as at the Contract Disposal Calculation Date. Provided also that to the extent that additional Approved Mezzanine Debt is subscribed the figure in sub-paragraph (i) will be adjusted to include an additional payment which when added to the expected cashflows to additional mezzanine would result in the additional mezzanine providers substantially recovering their original investment.

**One Year's Margin** means in respect of a Contract Year (or any part of a Contract Year), the amount calculated as follows:

One Year's Margin = A x B

Where:

A equals the amount of Approved Debt outstanding as at the Contract Disposal Calculation Date and

B equals the figure, expressed as a percentage, which represents the weighted average pre-refinancing margin in respect of the 12 month period (the "Calculation Period") ending on the Contract Disposal Calculation Date. B shall be calculated as follows:

$$B = \sum_1^n (x_n/365) \times WAM_n$$

Where:

$x_n$ : is the number of days during period n which fall within the Calculation Period

$WAM_n$  is the value for period n taken from the following table

$n$  is the number of periods spanned by the Calculation Period

**Table: One Year's Margin**

ONE YEAR'S MARGIN		
Period Start Date	Period End Date	Weighted Average Pre-Refinance Margin("WAM")
01-Apr-04	30-Jun-04	0.945 %
01-Jul-04	30-Sep-04	0.951 %
01-Oct-04	31-Dec-04	0.956 %
01-Jan-05	31-Mar-05	0.959 %
01-Apr-05	30-Jun-05	1.061 %
01-Jul-05	30-Sep-05	1.062 %
01-Oct-05	31-Dec-05	1.063 %
01-Jan-06	31-Mar-06	1.064 %
01-Apr-06	30-Jun-06	1.065 %
01-Jul-06	30-Sep-06	1.066 %
01-Oct-06	31-Dec-06	1.066 %
01-Jan-07	31-Mar-07	1.077 %
01-Apr-07	30-Jun-07	1.077 %
01-Jul-07	30-Sep-07	1.077 %
01-Oct-07	31-Dec-07	1.078 %
01-Jan-08	31-Mar-08	1.078 %
01-Apr-08	30-Jun-08	1.078 %
01-Jul-08	30-Sep-08	1.078 %
01-Oct-08	31-Dec-08	1.079 %
01-Jan-09	31-Mar-09	1.079 %
01-Apr-09	30-Jun-09	1.079 %
01-Jul-09	30-Sep-09	1.080 %
01-Oct-09	31-Dec-09	1.079 %
01-Jan-10	31-Mar-10	1.081 %
01-Apr-10	30-Jun-10	1.079 %
01-Jul-10	30-Sep-10	1.079 %

01-Oct-10	31-Dec-10	1.079 %
01-Jan-11	31-Mar-11	1.079 %
01-Apr-11	30-Jun-11	1.080 %
01-Jul-11	30-Sep-11	1.080 %
01-Oct-11	31-Dec-11	1.080 %
01-Jan-12	31-Mar-12	1.080 %
01-Apr-12	30-Jun-12	1.080 %
01-Jul-12	30-Sep-12	1.080 %
01-Oct-12	31-Dec-12	1.081 %
01-Jan-13	31-Mar-13	1.081 %
01-Apr-13	30-Jun-13	1.081 %
01-Jul-13	30-Sep-13	1.081 %
01-Oct-13	31-Dec-13	1.082 %
01-Jan-14	31-Mar-14	1.082 %
01-Apr-14	30-Jun-14	1.083 %
01-Jul-14	30-Sep-14	1.083 %
01-Oct-14	31-Dec-14	1.083 %
01-Jan-15	31-Mar-15	1.083 %
01-Apr-15	30-Jun-15	1.084 %
01-Jul-15	30-Sep-15	1.084 %
01-Oct-15	31-Dec-15	1.085 %
01-Jan-16	31-Mar-16	1.085 %
01-Apr-16	30-Jun-16	1.087 %
01-Jul-16	30-Sep-16	1.087 %
01-Oct-16	31-Dec-16	1.088 %
01-Jan-17	31-Mar-17	1.088 %
01-Apr-17	30-Jun-17	1.089 %
01-Jul-17	30-Sep-17	1.089 %
01-Oct-17	31-Dec-17	1.091 %
01-Jan-18	31-Mar-18	1.091 %
01-Apr-18	30-Jun-18	1.093 %
01-Jul-18	30-Sep-18	1.093 %
01-Oct-18	31-Dec-18	1.096 %
01-Jan-19	31-Mar-19	1.096 %
01-Apr-19	30-Jun-19	1.100 %
01-Jul-19	30-Sep-19	1.100 %
01-Oct-19	31-Dec-19	1.105 %
01-Jan-20	31-Mar-20	1.105 %
01-Apr-20	30-Jun-20	1.110 %
01-Jul-20	30-Sep-20	1.110 %
01-Oct-20	31-Dec-20	1.121 %
01-Jan-21	31-Mar-21	1.121 %
01-Apr-21	30-Jun-21	1.121 %
01-Jul-21	30-Sep-21	1.121 %
01-Oct-21	31-Dec-21	1.121 %

01-Jan-22	31-Mar-22	1.121 %
01-Apr-22	30-Jun-22	1.121 %
01-Jul-22	30-Sep-22	1.121 %
01-Oct-22	31-Dec-22	1.121 %
01-Jan-23	31-Mar-23	1.121 %
01-Apr-23	30-Jun-23	1.121 %
01-Jul-23	30-Sep-23	1.121 %
01-Oct-23	31-Dec-23	1.121 %
01-Jan-24	31-Mar-24	1.121 %
01-Apr-24	30-Jun-24	1.121 %
01-Jul-24	30-Sep-24	1.121 %
01-Oct-24	31-Dec-24	1.121 %
01-Jan-25	31-Mar-25	1.121 %
01-Apr-25	30-Jun-25	1.121 %
01-Jul-25	30-Sep-25	1.121 %
01-Oct-25	31-Dec-25	1.121 %
01-Jan-26	31-Mar-26	1.121 %
01-Apr-26	30-Jun-26	1.121 %
01-Jul-26	30-Sep-26	1.121 %
01-Oct-26	31-Dec-26	1.121 %
01-Jan-27	31-Mar-27	1.121 %
01-Apr-27	30-Jun-27	1.121 %
01-Jul-27	30-Sep-27	1.121 %
01-Oct-27	31-Dec-27	0.000 %

10.5 The factors identified in this paragraph 10.5 are any direction from the Statutory Arbitrator that any new or varied obligations contained in the Restated Terms proposed by LUL at a Periodic Review or at an Extraordinary Review or the Affordability Constraints (including the profile of payments of the ISC to be taken into account pursuant to paragraph 7.4) or any amount which LUL has stated pursuant to paragraph 2.2 it wishes to make upon expiry of the Contract:

- (i) involve an increase in risk (including but not limited to an increase in technical risk in meeting the Restated Terms and regardless of any costs or contingencies in respect thereof taken into account pursuant to paragraph 7, and including also an increase in risk of non-payment resulting from a change in the payment profile that LUL may specify as part of the Restated Terms) for Infraco that is material in the context of Infraco's overall activities pursuant to the Contract or in the context of the risk of failure to pay ISC; and/or
- (ii) are such that a Notional Infraco would require Eligible Finance for performance of the Restated Terms from the Review Date.

## PART 5: GUIDANCE TO THE ARBITER

### ***Guidance to the Statutory Arbiter***

Factors to which the Statutory Arbiter must have regard in giving any direction under section 229(3) of the GLA.

Date: \_\_\_\_\_

### **GUIDANCE FROM PARTIES TO A PPP AGREEMENT**

#### **1. Introduction**

1.1 This guidance and paragraph 6 (*Guidance to the Statutory Arbiter*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP agreement is issued to the Statutory Arbiter pursuant to Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP agreement between London Underground Limited (**LUL**) and Infraco JNP (**Infraco**) (collectively, the **Parties**) dated \_\_\_\_\_ (the **PPP Contract**). The guidance constitutes factors notified to Statutory Arbiter by the Parties, acting jointly, for the purpose of Section 231(6) of the Greater London Authority Act 1999 (the **GLA Act**). It covers matters relating to the exercise of the Statutory Arbiter's functions on which the Parties hold a common view.

1.2 This guidance dated [•] relates to the discharge by the Statutory Arbiter of the functions conferred or imposed on him by or under the GLA Act in connection with any reference to him for directions and/or guidance pursuant to Schedule 1.9 of the PPP Contract.

1.3 The Parties have agreed that the guidance on this matter may not be changed or rescinded except by consent of both Parties.

1.4 The Parties have agreed that this guidance replaces the guidance to him in the letter dated 31 December 2002 and that such former guidance is hereby rescinded.

#### **2. Objective**

The Parties agree that their objective in issuing this guidance to the Statutory Arbiter is to provide a clear statement of the approach that the Parties agree should be taken on certain issues, so that the Statutory Arbiter can take account of the Parties' agreement on these issues.

#### **3. Process**

LUL and Infraco attach great weight to the Statutory Arbiter following open and transparent procedures in determining what directions to give on any matters that are referred to him in connection with a Periodic or Extraordinary Review and, in particular, to:

- (a) both parties being notified of any matters referred to him and of the general process that he intends to adopt in dealing with them;
- (b) LUL, Infraco and their respective stakeholders (including, in the case of LUL, its holding company, Transport for London, the Mayor and any Minister and in the case of Infraco providers of equity and debt finance) being invited to submit

representations to the Statutory Arbiter on these matters and having access to the representations submitted by others;

- (c) the Statutory Arbiter taking expert advice on matters where he would be better informed by expert opinion and making available to the parties and their stakeholders the terms of reference of the advisors and an informative summary of their advice;
- (d) the Statutory Arbiter providing the parties and their stakeholders with provisional conclusions on matters referred to him, with summaries of the arguments made to him in relation to those matters and the reasons in support of the conclusions provisionally reached;
- (e) LUL, Infraco and their stakeholders being invited to submit representations to the Statutory Arbiter on the provisional conclusions and having access to the representations submitted by others; and
- (f) the issue of final conclusions taking into account the representations received.

#### **4. Credit rating**

LUL and Infraco attach great weight to the Statutory Arbiter having regard to the desirability, from the point of view of maintaining Infraco's ability to finance contract performance by borrowings in the debt finance market, of Infraco having a credit rating at the end of a Periodic Review not less than the lower of its credit rating at the Transfer Date, and its credit rating immediately before the Review Process, it being acknowledged that:

- (a) the quality and/or quantity of information available to the Statutory Arbiter may be greater than that available to the rating agencies and that the Statutory Arbiter is to be able, in accordance with his statutory duties and any other guidance provided to him, to draw whatever conclusions are supported by information available to him and relevant to his functions; and
- (b) the parties intend that the credit rating of Infraco ought not to be adversely affected solely because of new obligations to be assumed by it at a Periodic Review or solely because of the level of the ISC set by the Statutory Arbiter in respect of the efficient and economic costs of performing the Infraco Obligations after the Review Date.

#### **5. Market advice**

The parties:

- (a) agree to procure joint advice to the Statutory Arbiter from a financial adviser of international repute in relation to the markets available to Infraco to finance efficient and economic performance in accordance with Good Industry Practice of the Restated Terms from a Review Date (based on preparation and circulation of an appropriate Information Memorandum to interested parties and the indicative commitments they are willing to offer in response and the terms of offers of finance that Infraco may reasonably expect to be able to obtain in those markets; and
- (b) attach great weight to the Statutory Arbiter having due regard to such advice.

## 6. Notional Infraco; efficiency and economy; Good Industry Practice

6.1 Paragraph 1 (*Statutory Arbiters' Jurisdiction*), Schedule 1.9 (*The Statutory Arbitrator and Reviews*) of the PPP Contract describes the basis on which references to the Statutory Arbitrator for directions and/or guidance may be made. A copy of Schedule 1.9 (*The Statutory Arbitrator and Reviews*) is attached.

6.2 Many of the matters on which the Statutory Arbitrator may be asked to give directions and/or guidance relate to the level of Underlying ISC that LUL is to pay to Infraco from the next Review Date and to the components from which this amount is constructed.

6.3 For these purposes the Statutory Arbitrator is referred to a Notional Infraco. A Notional Infraco is defined by the PPP Contract as an assumed entity that has taken over Infraco's responsibilities at the Transfer Date, that carries out its activities in an overall efficient and economic manner and in accordance with Good Industry Practice, that has the characteristics set out below and also has Infraco's responsibilities for future performance of the Contract. The characteristics are that the assumed entity:

- (a) by the time of any Periodic Review, has performed the activities that an efficient and economic Infraco would have performed in prior Review Periods so as to be reasonably certain of its ability to perform obligations that are due for performance in that and subsequent Review Periods;
- (b) in the next Review Period, will perform the obligations that are due for performance in that Review Period and the activities that an efficient and economic Infraco would perform in that Review Period so as to be reasonably certain of its ability to perform obligations that are due for performance in a subsequent Review Period;
- (c) has the same contractual commitments to third parties as Infraco actually has to the extent that these relate to:
  - (i) performance of the Infraco Obligations; or
  - (ii) performance of obligations that LUL modifies or discontinues through the Restated Terms,

and, in either case, such contractual commitments are consistent with Infraco performing its obligations in an overall economic and efficient manner and in accordance with Good Industry Practice;

- (d) has the same funding arrangements as Infraco actually has, to the extent that these are consistent with Infraco performing its obligations in an overall economic and efficient manner and in accordance with Good Industry Practice, and where further finance is required for the future performance of its obligations and activities (other than to meet Net Adverse Effects in excess of the Materiality Threshold), will procure finance in an efficient and economic manner both as to the proportions to be contributed by equity and debt and to the cost of the debt assuming the equity to be remunerated at the Equity Rate of Return; and
- (e) assesses operating and capital costs as it would when entering into a contract after a competitive tendering process in respect of the relevant activities and having regard to:

- (x) the risks associated with individual activities (including the risk of cost overruns and ISC Adjustments);
- (y) the risk that it may have to undertake activities which it has not expected to have to carry out; and
- (z) the probability that in the management of a portfolio of activities, the actual cost of some individual activities will exceed the costs allowed, and the actual costs of other individual activities will be less than the costs allowed;

6.4 The Parties' guidance to the Statutory Arbiter is that, in considering the costs that would be incurred and the debt and equity required by Notional Infraco, he should proceed on the basis that such an Infraco would follow Good Industry Practice, which is defined in the Master Definitions Agreement as:

"in respect of any aspect of the Services and subject always to its statutory safety obligations, whilst always ensuring that risks are reduced to a level which is as low as is reasonably practicable the exercise of the degree of skill, diligence, prudence and foresight and practice which could reasonably and ordinarily be expected from a skilled and experienced person engaged in:

- (a) carrying out the same type of responsibilities of Infraco under the PPP Contract with respect to such aspect of the Services; or
- (b) carrying out responsibilities, whether individually or as a package of responsibilities, which could reasonably be regarded as being comparable to the responsibilities of Infraco under the PPP Contract with respect to such aspect of the Services,

in each case, performing its obligations under the same, reasonably comparable or similar circumstances and utilising all the information available at the relevant time".

6.5 The Parties' guidance to the Statutory Arbiter is that what should be expected of an Infraco working to Good Industry Practice is:

- (a) establishing and maintaining whole life asset planning and maintenance regimes;
- (b) considering the issues relevant to each stage in any project and putting in place a strategy to deal with them;
- (c) ensuring the right competence is available, including appropriate external advice when needed;
- (d) planning for operational, contractual and financial contingencies;
- (e) recognising that systems and assets must be useable in practice and taking appropriate steps to ensure this, looking at comparable industries where relevant and taking account of practical constraints;
- (f) recognising the time and resources needed for systems integration and taking appropriate steps to make it possible;
- (g) understanding the degraded operation of complex systems so as to ensure controlled degradation;

- (h) planning, and monitoring projects effectively, and monitoring and taking account of critical constraints;
- (i) designing to take account of buildability and operational constraints; and
- (j) effective change management.

6.6 The Parties' guidance to the Statutory Arbiter is that where Infraco has procured a contract through competitive tendering in accordance with paragraph 1A of Schedule 5.4 (*Sub-contracts*) of the PPP Contract, the Statutory Arbiter should presume that the pricing and terms of that contract were a fair reflection of the market for such a contract at the date when that contract was entered into (although this shall not constitute a presumption that the procurement strategy of Infraco under which such contract was entered into was efficient and economic). However, where there is any reason to doubt that the pricing and/or terms were such a fair reflection and that this might be to the disadvantage of Infraco or its "successors", the Statutory Arbiter may take into account any other evidence he reasonably considers relevant in assessing whether the pricing and/or terms of the contract were a fair reflection of the market for such a contract.

6.7 The Parties' guidance to the Statutory Arbiter is that, subject to paragraph 6.8 the Statutory Arbiter should have regard, in particular, to the following factors in estimating the level of costs that would be incurred and the amount of debt and equity that would be required by a Notional Infraco:

- (a) the costs actually incurred by all Infracos who are party to PPP Contracts with LUL in the period prior to the Review, to the extent that these are incurred with efficiency and economy and in accordance with Good Industry Practice;
- (b) efficiency savings that can reasonably be expected based on the experiences of other Infracos and other participants in markets relevant to the Infraco's activities;
- (c) reasonable expectations about trends of these costs taking account of likely trends in input costs to the Infracos;
- (d) trends in costs that have been exhibited in similar industries in the past;
- (e) cost implications of changes in LUL's performance and/or contractual requirements including appropriate provision for contingencies in the manner referred to in paragraph 6.8;
- (f) reasonable standards of financial prudence having been demonstrated by Infraco;
- (g) the proportion of debt and equity in the Infraco's financing plan at the Transfer Date; and
- (h) the proportion of debt and equity which could be expected in any future funding for an efficient and economic Infraco which had properly performed its contractual obligations up to the date of the Review following Good Industry Practice.

6.8 The Parties' guidance to the Statutory Arbiter is that it is particularly important that he should determine Infrastructure Services Charges based on his estimate of what the most likely level of operating and capital costs would be in future periods for a Notional Infraco on the basis that such best estimate shall be the aggregate of all the amounts as would be agreed to by a Notional Infraco in a competitive tender in respect of the relevant activities having regard to:

- (a) the risks associated with individual activities (including the risk of cost overruns and revenue abatements);
- (b) the risk that a Notional Infraco may have to undertake activities which it has not expected to have to carry out; and
- (c) the probability that in the management of a portfolio of activities, the actual cost of some individual activities will exceed the costs allowed, and the actual costs of other individual activities will be less than the costs allowed.

He should not base his determination on:

- (x) expected levels of efficiency for future periods which would represent a target that is unlikely to be achieved by such an Infraco; and
- (y) an assumption that all the Infracos could reasonably be expected to achieve the financial performance previously demonstrated by the best Infraco, unless there is a clear reason for this assumption.

The Statutory Arbiter should base his decision by reference to Good Industry Practice notwithstanding that he may consider that an Infraco could in future outperform the level of costs which would be agreed to by a Notional Infraco in a competitive tender in respect of the relevant activities in the manner described above.

6.9 The Parties' guidance to Statutory Arbiter is that in determining the Infrastructure Service Charge the Statutory Arbiter should also have regard to and take account of the following factors:

- (a) to give great weight to the importance of concluding his review and issuing his directions by the Review Date or of making interim adjustment to the level of Infrastructure Service Charge where there is overall benefit in extending his review beyond the Review Date;
- (b) in considering whether the actions of an Infraco are efficient and economic, (i) the implications of the contractual structure and performance and payment regime under which the Infraco operates; (ii) the fact that following Good Industry Practice may still allow for different methods of procurement; and (iii) the specific nature of Infraco's asset base, should be considered;
- (c) that the Infracos may have continuing commitments in connection with supply contracts (including the Secondment Agreements) and/or collective labour agreements and (in relation to the impact of the new finance on the cost of finance already in place, and in relation to the new fixed amounts to be allowed in respect of Base Finance and Eligible Finance respectively) funding documents at the Review Date to meet the continuing requirements of the PPP Contract and these commitments are less good value for money than terms available in relevant supply market at the time of the Review. In these circumstances, it would be appropriate to consider:
  - (i) whether those supply contracts and/or collective labour agreements and/or funding documents and the constraints on Infracos that they imply, were nevertheless consistent with Infraco performing its obligations in an overall economic and efficient manner and in accordance with Good Industry Practice at the time they were entered into rather than considering them in isolation and in circumstances prevailing at the time of the relevant review; and/or

- (ii) whether, taking due account of all consequences (including any Refinancing Benefit which accrues to LUL) which may arise as a consequence of any termination (or in the case of funding documents, prepayment), the Infraco could now effect overall efficiency and economy gains by terminating the existing commitment in accordance with its terms or by agreement, bearing any termination costs and recommitting on current market terms;
- (d) that an Infraco may have continuing contractual commitments entered into to meet obligations which LUL modifies or discontinues from the Review Date, where regard should be had to whether the commitments would have been assumed by an efficient and economic Infraco at the point of entering into such contractual commitment and the cancellation expenditure which an efficient and economic Infraco would now incur in terminating the commitment;
- (e) in relation to amounts to be allowed pursuant to sub-paragraphs 7.2(c) and (d) of Schedule 1.9 of the PPP Contract and in respect of finance costs and fees and like matters associated with finance which are considered to be part of operating and capital costs pursuant to paragraph 7.2(b) of Schedule 1.9 of the Contract, that:
  - (i) the terms of reference to the Statutory Arbiter require him to allow the costs of finance as stipulated in or pursuant to annex 3 to Schedule 1.9 without regard to whether these represent efficient and economic costs;
  - (ii) where Base Finance or Eligible Finance is required, it is relevant to consider whether this can be obtained with greater efficiency and economy or this can only be obtained at all, by refinancing existing facilities and in such circumstances to take into account the costs and fees associated with termination or prepayment of existing finance arrangements in addition to the costs and fees associated with putting new finance arrangements in place; and
  - (iii) for purposes of paragraph (ii) above, it is relevant to have regard to the considerations referred to in paragraph (c) above and also to (x) existing terms and types of financing it has utilised prior to the Review, to the extent that these are on an efficient and economic basis, which includes the recognition of the possible requirement of the Infracos to raise additional finance; (y) the terms on which efficient and economic finance is available to a Notional Infraco in the market at the time; and (z) reasonable standards of financial prudence in light of the obligations of the PPP Contract at the time;
- (f) to the extent that raising incremental finance impacts on the cost of existing finance, the cost allowed as referred to in paragraph (e) in respect of the incremental finance that would be incurred by a Notional Infraco should take include the costs created for the original finance by any conditions in the original financing; and
- (g) representations by and evidence from the Parties as to the availability, levels and terms of financing that would then be available to a Notional Infraco.

6.9A The Parties' guidance to Statutory Arbiter is that in determining the Infrastructure Service Charge, and in particular, when he is considering the matters referred to in paragraph 6.9 in the context of such determination, the Statutory Arbiter should also have regard to and take account of the following factors:

- (a) Infraco has refinanced its Approved Debt pursuant to the terms of (*inter alia*) an Issuer/Borrower Facility Agreement dated [•] and made between Infraco, Tube Lines (Finance) plc and the Law Debenture Trust Corporation PLC (*the IBFA*);
- (b) as a consequence of the structure of the refinancing, amendments have been made to certain defined terms in the Master Definitions Agreement to take account of the fact that the Issuer under the IBFA is the provider of both Approved Debt and Mezzanine Debt;
- (c) the Parties do not intend that these changes to definitions should have any effect on the matters which the Arbitrator should consider in circumstances when Base Finance or Eligible Finance is required, and particularly in considering any matter referred to him pursuant to paragraph 1.4A of Schedule 1.9 with regard to the terms of Required Finance.

## **7. Refinancing Benefit**

The parties wish that the Arbitrator should be aware that they have agreed that LUL's share of any Refinancing Benefit calculated in accordance with clause 31.6 of the PPP Contract would be effected through clause 31.6 of the PPP Contract and an adjustment to the ISC (with such adjustment to the ISC being dealt with in accordance with clause 18 of the PPP Contract).

## **8. Net Adverse Effect**

8.1 Schedule 1.9 of the PPP Contract contains a number of provisions that are designed to protect Infraco altogether from Net Adverse Effect within a Review Period that are in excess of the Materiality Threshold.

8.2 When assessing whether Infraco has incurred Net Adverse Effects it is necessary to start by ascertaining the lower of: -

- (a) the aggregate costs that Infraco actually incurred in performing the Infraco Obligations during a Review Period; or
- (b) the aggregate costs that Infraco would have incurred in performing the Infraco Obligations during a Review Period in an overall efficient and economic manner and in accordance with Good Industry Practice with regard to the extent applicable to the characteristics of a Notional Infraco save for any need to fund Net Adverse Effects in excess of the Materiality Threshold.

In considering the aggregate costs that Infraco would have incurred in performing the Infraco Obligations during a Review Period in an overall efficient and economic manner as referred to in sub-paragraph (b), the parties wish the Statutory Arbitrator to have regard to: (x) Infraco's costs, budgets and programmes of activities proposed as part of the original bidding process; and (y) the possibility that some of the costs Infraco actually incurred (including but not limited to costs incurred under subcontracts and the Secondment Agreements) may be less than those that would have been incurred by performance in an efficient and economic manner as referred to in sub-paragraph (b) (and the parties wish any such difference to be ignored for purposes of determining costs pursuant to paragraph (b) above) as well as having regard to the possibility that some of the costs that Infraco actually incurred (including but not limited to costs incurred under subcontracts and the Secondment Agreements) are more than those that would have been incurred by performance in an efficient and economic manner as referred to in sub-

paragraph (b) (and the parties wish any such difference to also be ignored for purposes of determining costs pursuant to paragraph (b) above).

8.3 For these purposes, the parties also wish the Statutory Arbiter to allow the efficient and economic costs that Infraco incurs after the Transfer Date:

- (a) arising out of the pre-Transfer Date working practices that may or may not have been efficient and economic; or
- (b) from settling undischarged pre-Transfer Date liabilities not reimbursable under the Share Purchase Agreement that may or may not be efficiently and economically incurred.

## **8A. Lease Financing**

The parties' guidance to the Statutory Arbiter in relation to the financing of the procurement of certain assets (such as rolling stock) which may be procured by Infraco in order to fulfil the Infraco Obligations is that it is likely that an economic and efficient means of financing such procurement may be to use an operating or finance lease with a duration which is linked to the likely economic life of the assets. As the economic life of such assets is likely to exceed the remaining duration of the Contract Period, it is recognised that it is unlikely to be possible to proceed on the basis of such a lease unless LUL agrees to enter into arrangements with the proposed lessors, including with regard to LUL's acceptance of appropriate liability under the lease after the end of the Contract Period. The parties recognise that LUL may not wish to undertake such a liability, or it may not agree terms in respect of such liability, so that the Infraco may need to arrange different means of finance. In particular such finance is likely to have to be repaid on or before the end of the Contract Period. The parties' guidance to the Statutory Arbiter is that if it is necessary for the Infraco to proceed as described in the last two sentences then that course of action is one which a Notional Infraco could follow.

## **9. Partnership**

The Parties' guidance to the Statutory Arbiter is that in determining the level of Infrastructure Service Charges the Statutory Arbiter should be mindful of the fact that, in the context of their respective rights and obligations under the PPP Contract, the Parties intend to work in a spirit of partnership, which London Underground described in its Invitation to Tender as follows:

“We are committed to providing the best possible Underground service to the travelling public by:

- working together to improve customer service
- creating an environment based on mutual respect, trust and fairness that promotes open and honest communication at all levels
- solving problems together
- recognising and rewarding those who contribute to the success of the partnership
- working together to achieve our objectives”

As the parties intend to work together in partnership, in accepting evidence from either party as to the likely level of future costs, the Statutory Arbiter should have regard to the

extent that such information has been shared with the other party on a timely and open basis.

Yours faithfully

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***London Underground Limited***

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***Infraco***

**SCHEDULE 8**

**SCHEDULE 5.16 TO THE AMENDED AND RESTATED SERVICE CONTRACT**

**SCHEDULE 5.16**

**CONTRACT DISPOSITION AGREEMENT**

**THIS AGREEMENT** is made on [\_\_\_\_\_]

**BETWEEN:**

**LONDON UNDERGROUND LIMITED** whose registered office is at 55 Broadway, London SW1H 0BD (**LUL**);

**TUBE LINES LIMITED** whose registered office is at 15 Westferry Circus, Canary Wharf, London E14 4HD (**Transferor**); and

[**SUCCESSOR INFRACO**] whose registered office is at [\_\_\_\_\_] (**Transferee**).

**WHEREAS:**

(A) The Transferor has been providing certain services for the management and maintenance of parts of LUL's infrastructure pursuant to a PPP agreement dated 1 April 2000, as defined in the Greater London Authority Act 1999 (the **Act**), entered into with LUL (the **PPP Contract**).

(B) The Transferee is to continue the provision of such services pursuant to the PPP Contract.

(C) Certain property, rights and liabilities of the Transferor (the **Business**) are to be transferred to the Transferee pursuant to a transfer scheme on \_\_\_\_\_ under section 217 of the Act (the **Transfer Scheme**) or by delivery to the Transferee of property, title to which can be transferred by delivery, to the extent required by the Transfer Scheme.

(D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the Transfer Scheme and the transfer of the PPP Contract.

(E) The Transferor has assigned to its Funders by way of security all of its right, title and interest in and to all amounts receivable by the Transferor under or pursuant to this Agreement by way of a Borrower Deed of Charge dated [\_\_\_\_\_].

**IT IS AGREED**

**DEFINITION 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 [\_\_\_\_\_] between LUL, BCV, SSL and JNP (the **MDA**).

1.2 Words and expressions used in the MDA shall, to the extent applicable and unless defined below or the context otherwise requires, have the meanings assigned to them in the MDA. The following words and expressions shall have the meaning set out opposite:

**Base Price** means the Novation Price excluding any amounts payable under clause 41.13 or any adjustment pursuant to clause 41.14 of the PPP Contract;

**Novated Obligations** means all of the obligations of the Transferor under the PPP Contract, arising prior to the Transfer Scheme during the ordinary course of business of the Transferor in complying with its obligations under the PPP Contract, but excluding the Retained Rights and Obligations;

**Novation** means novation of the PPP Contract pursuant to clause 2;

**Novation Price** means, if the Contract Sale takes place:

- (a) with a Permitted Transferee pursuant to clause 41.3 (Sale process) of the PPP Contract, the amount agreed between the Transferor and Transferee in respect of the novation of the PPP Contract;
- (b) with an LUL Nominee pursuant to clause 41.5(a) (Sale to LUL Nominee) of the PPP Contract, the Underpinned Amount together with any applicable amount calculated in accordance with clause 41.13 (Tax) of the PPP Contract;
- (c) with an LUL Nominee pursuant to clause 41.5(b) (Sale to LUL Nominee) of the PPP Contract, the Estimated Fair Value of the Contract or the aggregate amount of the Approved Debt and the Approved Mezzanine Debt determined pursuant to that clause (where such aggregate amount, together with the best estimate that can be made as at the Contract Disposal Calculation Date of any amount that would be due on applying clause 41.13 determined pursuant to clause 41.5(b), is higher than the Estimated Fair Value of the Contract together with, or less, as applicable, the best estimate that can be made as at the Contract Disposal Calculation Date of the adjustment due on applying clause 41.14 (Tax) determined pursuant to clause 41.5(b)) together with any applicable amount calculated in accordance with clause 41.13 (Tax) of the PPP Contract and together with, or, as the case may be, less any adjustment calculated in accordance with clause 41.14 (Tax) of the PPP Contract;
- (d) with an LUL Nominee pursuant to clause 41.5(c) (Sale to LUL Nominee) of the PPP Contract, the relevant Special Mandatory Sale Amount together with any applicable amount calculated in accordance with clause 41.13 (Tax) of the PPP Contract;
- (e) with an LUL Nominee pursuant to clause 41.5(d) (Sale to LUL Nominee) of the PPP Contract, the Corrupt Gifts and Safety Breach Disposition Price together with any applicable amount calculated in accordance with clause 41.13 (Tax) of the PPP Contract; or
- (f) with an LUL Nominee pursuant to clause 41.5(e) (Sale to LUL Nominee) of the PPP Contract, the Extraordinary Mandatory Sale Price together with any applicable amount calculated in accordance with clause 41.13 (Tax) of the PPP Contract,

excluding (i) in the case of (a) above, any amount apportioned to the Assets as agreed between the Transferor and the Transferee and paid to Infracore pursuant to the Transfer

Scheme; and (ii) in the case of (b) to (f) above, any amount apportioned to the Assets in accordance with clause 41.6(d) (Process of sale to LUL Nominee) of the PPP Contract and paid to Infraco pursuant to the Transfer Scheme;

**Retained Rights and Obligations** means those rights and obligations of LUL and the Transferor referred to in clauses 40.6A (Infraco to remedy despite dispute, etc), 41.6(e)(i) and (ii) (Process of Sale to LUL Nominee), 41.6A(a) and (b) (Permitted Transferee Payment) of the PPP Contract, and those rights of the Transferor under clauses 40.6A (Infraco to remedy despite dispute, etc), 41.3(b) and (c) (Sale process), 41.6B (Interim Payment), 41.13 (Tax) and 41.14 (Tax) of the PPP Contract in each case including any and all claims, rights or causes of action against persons arising from, relating to or in connection with such rights and/or obligations;

**Transferred Rights** means the Transferor's rights, title and interests (whether existing now or arising hereafter) in its PPP Contract including in respect of any and all claims, rights or causes of action against persons arising from, relating to or in connection with such rights, title and interest, but excluding any credit balances on any bank accounts held by or for the benefit of Infraco and also excluding the Retained Rights and Obligations;

**Transferee Warranties** means the warranties, representations and indemnities made by, and the covenants and agreements of, the Transferee in this Agreement; and

**Transferor Warranties** means the warranties, representations and indemnities made by, and the covenants and agreements of, the Transferor in this Agreement.

## SALE AND PURCHASE

2. Subject to clause 4 (Condition), completion of this Agreement will occur immediately upon the occurrence of the later of (1) the receipt of the amount (if any) apportioned to the Assets as agreed between the Transferor and the Transferee and paid pursuant to the Transfer Scheme (or otherwise in consideration of the transfer of the Assets) and (2) compliance by the Transferee with clause 3.1 (Payment) and with effect on and from the Contract Disposal Date:

- (a) in consideration of the mutual covenants and agreements contained herein and the transfer of the property, rights and liabilities under the Transfer Scheme or, to the extent required by the Transfer Scheme, to transfer by delivery to the Transferee of property, title to which can be transferred by delivery, the Transferred Rights and the Novated Obligations are hereby novated to the Transferee;
- (b) the Transferee undertakes to LUL to assume, acquire, perform and comply with the Novated Obligations in substitution for the Transferor whether arising on, before or after the date of this Agreement as if the Transferee had at all times been a party to the PPP Contract;
- (c) LUL agrees to the substitution of the Transferee in place of the Transferor and that the Transferee shall assume, acquire, perform and comply with the Novated Obligations in substitution of the Transferor and may exercise and enjoy all the Transferred Rights in substitution for the Transferor, in each case whether arising on, before, or after the date of this Agreement as if the Transferee had at all times been a party to the PPP Contract;

- (d) LUL hereby releases and discharges the Transferor from the Novated Obligations and accepts the liabilities and obligations to it of the Transferee in place of the Transferor.

#### PAYMENT

3.1 On [date] or such other date as is agreed by the parties, the Base Price shall be paid, in immediately available funds by the Transferee to the Issuer Security Trustee, the Borrower Security Trustee or the Transferor (as the case may be, in accordance with clause 14.2) (where the Base Price is positive) or by the Transferor to the Transferee (where the Base Price is negative).

3.1A Any element of the Novation Price or adjustment thereto calculated pursuant to clauses 41.13 or 41.14 (Tax) of the PPP Contract shall be due and be paid on the date or dates specified in clauses 41.13 or 41.14 (as the case may be).

3.2 The Novation Price paid under Clause 3.1 and/or Clause 3.1A shall be reduced by any payment made by LUL or its nominee on account of the Extraordinary Mandatory Sale Price pursuant to Clause 41.5(e) of the PPP Contract.

3.3 [Not used]

#### Security for Undetermined Rectification Costs

3.4 If the Contract Sale takes place with an LUL Nominee in circumstances where the Base Price is either the Underpinned Amount, the Estimated Fair Value of the Contract, the Special Mandatory Sale Amount or the Extraordinary Mandatory Sale Price, and the Rectification Costs have not been finally agreed or determined prior to the Contract Disposal Date and accordingly the Base Price cannot be finally determined prior to the Contract Disposal Date then, subject to clauses 3.4A and 3.5:

- (a) if the difference between the amounts of Rectification Costs being asserted by the Transferor and the Transferee (the amount of such difference being referred to herein as the **Disputed Rectification Amount**) is such that, irrespective of the outcome of such final agreement or determination, the Base Price shall either always be positive or always be negative:
- (i) if the Base Price is positive, the Base Price shall be calculated on the basis of the amount of Rectification Costs that have at that time been finally agreed or determined (and therefore including the Disputed Rectification Amount) and shall be paid by the Transferee on the Contract Disposal Date or in accordance with the date or dates specified in clause 41.5 (*Sale to LUL Nominee*) of the PPP Contract, if earlier; or
  - (ii) if the Base Price is negative, the Base Price shall be calculated on the basis of the amount of Rectification Costs that have at that time been finally agreed or determined (and therefore excluding the Disputed Rectification Amount) and shall be paid by the Transferor on the Contract Disposal Date or in accordance with the date or dates specified in clause 41.5 (*Sale to LUL Nominee*) of the PPP Contract, if earlier,

provided in each of the foregoing cases that the Transferor has, prior to the Contract Disposal Date, complied (and continues to comply) with the provisions of clause 3.5; or

- (b) if the Disputed Rectification Amount is such that, depending upon the outcome of the final agreement or determination of Rectification Costs the Base Price may be either positive or negative, then the Base Price shall not be paid until the date which is fourteen days after the Rectification Costs have been finally agreed or determined and the provisions of clause 3.5 shall apply.

3.4A In circumstances where a Contract Sale takes place with an LUL Nominee pursuant to clause 41.5 (*Sale to LUL Nominee*) of the PPP Contract, the Transferee may only deduct the Disputed Rectification Amount to the extent that the Base Price paid to the Transferor on the Contract Disposal Date is not less than:

- (a) in the case of a Contract Sale pursuant to clause 41.5(a) (*Sale to LUL Nominee*) of the PPP Contract, the 95% Amount;
- (b) in the case of a Contract Sale pursuant to clause 41.5(b) (*Sale to LUL Nominee*) of the PPP Contract, the aggregate of the Approved Debt and Approved Mezzanine Debt ;
- (c) in the case of Contract Sale pursuant to clause 41.5(c) (*Sale to LUL Nominee*) of the PPP Contract, the Special Mandatory Sale Amount; or
- (d) in the case of Contract Sale pursuant to clause 41.5(e) (*Sale to LUL Nominee*) of the PPP Contract, the Extraordinary Mandatory Sale Price,

and the Transferee shall pay to the Transferor that part of the Base Price equal to the relevant amount in sub-paragraphs (a), (b), (c) or (d) above on the Contract Disposal Date without paragraph 3.5 applying to such payment.

3.5 If any Disputed Rectification Amount remains on the Contract Disposal Date then, as a condition to the Transferor's right to receive that part of the Base Price in excess of the relevant amount in clause 3.4A(a), (b) (c) or (d) above, including the Disputed Rectification Amount on the Contract Disposal Date (if the Base Price is positive) or as a condition to the Transferor's right to defer the payment of the Disputed Rectification Amount (if the Base Price is negative), and in any event if the provisions of clause 3.4(b) apply, by not later than the date which is seven days prior to the Contract Disposal Date the Transferor shall provide security to LUL in a form reasonably satisfactory to LUL in respect of payments due to LUL pursuant to clause 3.6 below (**Rectification Costs Security**) in an amount not less than:

- (a) if clause 3.4(a) above applies, one hundred and ten per cent. (110%) of the Disputed Rectification Amount; or
- (b) if clause 3.4(b) above applies, one hundred and ten per cent (110%) of the greater of (i) the maximum Base Price which may be payable by the Transferor if the amount of Rectification Costs which is finally agreed or determined is the maximum amount asserted by the Transferee and (ii) the Disputed Rectification Amount.

3.6 If the provisions of clauses 3.4 and 3.5 apply and, following final agreement or determination of the Rectification Costs, any refund of the Base Price (if the Base Price is positive) or payment of the Base Price (if the Base Price is negative) is payable by the Transferor, the Transferor shall make such payment by not later than fourteen (14) days after the date upon which the Rectification Costs were finally agreed or determined together with interest thereon at the Applicable Rate calculated from and including the Contract Disposal Date to but excluding the date of payment and upon payment in full of such amount LUL shall release the Rectification Costs Security.

3.7 If at any time the amount of the Rectification Costs Security shall be less than one hundred and five per cent (105%) of the aggregate of (i) the amount required to be covered by Rectification Costs Security under clause 3.5(a) or (b) above (as the case may be) and (ii) all accrued but unpaid interest at the Applicable Rate on the amount so required to be covered by Rectification Costs Security (such aggregate, the **Required Amount**) then the Transferor shall forthwith either increase the amount of the Rectification Costs Security or pay to the Transferee an amount on account of accrued interest such that thereafter the amount of the Rectification Costs Security shall be not less than one hundred and ten per cent (110%) of the Required Amount.

3.8 If the Transferor fails to make the payment required under clause 3.6 or clause 3.7 (or, in the case of clause 3.7, the Transferor fails to increase the amount of the Rectification Costs Security as required thereby) on the due date, the Transferee may, without prejudice to any of its other rights or remedies under this Agreement or any of the Transaction Documents, take such steps to enforce the Rectification Costs Security with respect to any or all of the unpaid amount as it may in its absolute discretion determine.

3.9 The Transferor shall bear all costs (including legal costs), charges and expenses incurred or sustained by it or LUL in connection with the creation, enforcement or release of the Rectification Costs Security.

#### **Pass-back of Claims**

3.10 If the Contract Sale takes place in circumstances where the Transferred Rights include the benefit of claims or causes of action against any sub-contractor of the Transferor (a **Defaulting Sub-Contractor**) the Transferee shall, promptly upon receipt thereof, pay to the Transferor (or as it may direct) to the greatest extent possible by way of an adjustment to the Novation Price any amounts recovered from a Defaulting Sub-Contractor as a result of such claim or cause of action provided that if, following final agreement or determination of the Rectification Costs, either:

- (a) the Novation Price is the Underpinned Amount calculated in accordance with paragraph (b) of the definition thereof together with any applicable amount calculated in accordance with clause 41.13 (*Tax*) of the PPP Contract; or
- (b) the aggregate of the Approved Debt, Approved Mezzanine Debt and the best estimate that can be made as at the Contract Disposal Calculation Date of any applicable additional amount calculated in accordance with clause 41.13 (*Tax*) of the PPP Contract exceeds the Estimated Fair Value of the Contract together with, or less, as applicable the best estimate that can be made as at the Contract Disposal Calculation Date of the adjustment due under clause 41.14 (*Tax*) of the PPP Contract (such excess, the **Funders' Incremental Amount**) and accordingly the Novation Price is the aggregate of the Approved Debt, Approved Mezzanine Debt and any additional amount payable under clause 41.13 (*Tax*) of the PPP Contract,

then the amounts payable by the Transferee to the Transferor under this clause shall be limited to the amount by which such amounts exceed:

- (i) in the case of paragraph (a) above, the aggregate of:
  - (A) the amount by which the Novation Price calculated on the basis of paragraph (b) of the definition of Underpinned Amount and any applicable amount calculated in accordance with clause 41.13 (*Tax*) of the PPP Contract exceeds the Novation Price which would have resulted if the Novation Price had

been calculated on the basis of paragraph (a) of the definition of Underpinned Amount; and

(B) the Transferee's costs of enforcing such claim or cause of action; or

(ii) in the case of paragraph (b) above, the Funders' Incremental Amount.

3.11 The Transferee shall use all reasonable endeavours diligently to pursue the relevant claim or cause of action against the Defaulting Sub-Contractor and shall consult with the Transferor prior to effecting any settlement of such claim or cause of action, provided always that the Transferee shall not be required to take or omit to take any step which in its reasonable judgement would be likely to have a material adverse effect upon its ability to perform its obligations or exercise its rights under the PPP Contract.

#### **CONDITION**

4. The obligations of the Transferee and the Transferor pursuant to this Agreement shall take effect immediately upon the granting of consent to the Transfer Scheme pursuant to section 217 of the Act and the coming into effect of the Transfer Scheme in accordance with its terms.

#### **REPRESENTATIONS AND WARRANTIES OF THE TRANSFEROR**

5.1 The Transferor hereby represents and warrants to the Transferee that:

- (a) the Transferor is duly organised and validly existing under the laws of the jurisdiction of its incorporation and has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement have not resulted, nor will result, in a breach of any provision of, or constitute a default under:
  - (i) the Transferor's constitutional documents; or
  - (ii) any Law applicable to the Transferor; or
  - (iii) any agreement or instrument to which the Transferor is a party or by which it is bound; and
- (c) this Agreement has been duly and validly authorised, executed and delivered by the Transferor and when duly executed and delivered by the other parties thereto will be the legal, valid and binding obligation of the Transferor, enforceable against the Transferor in accordance with its terms, except that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general applicability affecting the enforcement of creditors' rights generally and by the court's discretion in relation to equitable remedies.

5.2 The Transferor acknowledges that except for the Transferee's Warranties the Transferee has not made and does not make any representation or warranty, whether express or implied, of any nature whatsoever.

#### **REPRESENTATIONS AND WARRANTIES OF THE TRANSFEREE**

6.1 The Transferee hereby represents and warrants to the Transferor that:

- (a) the Transferee is duly organised and validly existing under the laws of the jurisdiction of its incorporation and has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement have not resulted, nor will result in, a breach of any provision of, or constitute a default under:
  - (i) the Transferee's constitutional documents; or
  - (ii) any Law applicable to the Transferee; or
  - (iii) any agreement or instrument to which the Transferee is a party or by which it is bound; and
- (c) this Agreement has been duly and validly authorised, executed and delivered by the Transferee and when duly executed and delivered by the other parties thereto will be the legal, valid and binding obligation of the Transferee, enforceable against the Transferee in accordance with its terms, except that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general applicability affecting the enforcement of creditors' rights generally and by the court's discretion in relation to equitable remedies.

6.2 The Transferee for itself and as agent for its shareholders hereby agrees with and acknowledges to LUL and the Transferor for themselves and as agent and trustee for and on behalf of their respective employees, directors, representatives, advisers and agents:

- (a) other than the Transferor Warranties set out in this Agreement, no representation, warranty or undertaking is or was given in or in relation to the novation and purchase, transfer and assignment of the Transferred Rights and the Novated Obligations, or any information, expression of opinion or future intention or any forecast, speculation, assessment, projection, illustration, estimate or budget or advice contained or referred to in any documents delivered to the Transferee or otherwise provided; and
- (b) the Transferee, its respective employees, directors, representatives, advisers and agents waive and will not enforce any right which they might otherwise have against LUL or the Transferor, their respective employees, directors, representatives, advisers or agents by virtue of any mis-statement, inaccuracy or omission in or from or otherwise in relation to any information or expressions of opinion or future intention or any forecast, speculation, assessment, projection, illustration, estimate, budget or advice supplied or given to the Transferee or any related party or any other person in connection with the subject matter of this Agreement, the PPP Contract and the transactions contemplated therein.

#### **ACKNOWLEDGEMENT**

7. LUL hereby acknowledges that the Transferee is a Permitted Transferee or a LUL Nominee, as the case may be, for the purposes of the PPP Contract.

#### **UNDERTAKINGS**

8.1 Upon payment of the Base Price and the amounts (if any) apportioned to the Assets, the Transferor shall:

- (a) deliver to the Transferee possession of such assets which are the subject of the Transfer Scheme;
- (b) procure that, within thirty (30) days after Novation, the name of the Transferor shall be changed so as to omit the word "[Infraco]" or any confusingly similar word or name;
- (c) procure that, as soon as reasonably practicable after Novation and in any event within six (6) months afterwards, the Transferor shall cease in any manner whatsoever to use or display any trade or service marks, trade or service names, registered designs or logos used or held by LUL or any confusingly similar mark, design, name or logo;
- (d) remove the Corporate IPRs from, (or where removal is not reasonably practicable) destroy or, if LUL so elects, deliver to LUL or any other company, firm or person designated by LUL, all items and documents which LUL or the Transferee does not require for the operation, maintenance, repair, renewal or enhancement of the Underground Network on or in relation to which the Corporate IPRs are then used;
- (e) for a period of six (6) months from Novation, provide to the Transferee such assistance as the Transferee may from time to time reasonably require, upon payment by the Transferee of the Transferor's reasonable costs in providing such assistance, so as to enable the services under the PPP Contract to continue to be carried on in all material respects in the same manner in which they were carried on during the twelve (12) months immediately preceding Novation;
- (f) forward and transfer to the Transferee as soon as practicable, and in any case within fourteen (14) days of receipt, any payments, documents, information, communications or correspondence which the Transferor may receive from time to time in relation to the Business and which should properly have been received by the Transferee, and that any payments so received by it after Novation in relation to the Business shall be held as agent of and trustee for the Transferee, pending such transfer; and
- (g) implement and comply with the provisions of the Handback Plan.

8.2 On the Contract Disposal Date the Transferor shall provide to the Transferee the personnel files of all Employees, together with all other documentation relating to the terms and conditions of the Employees.

8.3 The Transferee shall indemnify the Transferor against any Losses arising from any claims made by any of the employees transferring from the Transferor to the Transferee arising from:

- (a) any change in the working conditions or terms and conditions of such employees occurring on or after the Contract Disposal Date; and
- (b) any other claim in connection with their employment on or after the Contract Disposal Date.

8.4 The Transferor shall indemnify and keep indemnified the Transferee against any claim or claims by any Employee made against the Transferee at any time, including but not limited to, for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all costs and expenses thereof), which result or resulted from

any acts or omissions of the Transferor which occurred prior to the Contract Disposal Date.

8.5 All salaries and other emoluments, tax and national insurance payments, contributions to retirement benefit schemes relating to the Employees shall be borne by the Transferor up to but excluding the Contract Disposal Date and by the Transferee thereafter and all necessary apportionments shall be made.

8.6 The Transferor shall indemnify and keep indemnified the Transferee against any Losses suffered or incurred by the Transferee arising from the performance or breach of the Transferor's obligations and undertakings to third parties which occurred prior to the Contract Disposal Date and claims relating to the Environment relating to the period prior to the Contract Disposal Date.

8.7 With effect on and from the Contract Disposal Date, the Transferee shall comply with the undertakings as set out in clauses 39.2 and 39.3 (Pensions) of the PPP Contract and shall ensure that identical obligations are imposed on any subsequent Successor Employer.

#### **EFFECTS OF NOVATION**

9. Upon Novation all Service Points, Warning Notices, Corrective Action Notices, LUL Default Notices and Step-In Notices which have been accrued prior to the date of the Transfer Scheme by the Transferor pursuant to the PPP Contract shall be cancelled and all cure periods for remedying breaches of the PPP Contract shall be re-instated.

#### **VAT**

10.1 All sums payable in respect of supplies under this Agreement shall be exclusive of VAT, if any. Subject to clause 10.2 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 in respect of the supply complying with the VAT Regulations 1995; and the recipient 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.

10.2 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 any VAT incurred by a person 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 and Excise (and, in the case of the Transferor, only to the extent to which it or any VAT group of which it is a member would not have been able to recover such VAT if the only activities carried on by it were confined to the performance of its obligations and the exercise of its rights in relation to the Transaction Documents).

10.3 Each party shall provide each other party with any information reasonably requested by that other party in relation to the amount of VAT chargeable in accordance with this Agreement.

#### **SET-OFF**

11. All payments under this Agreement shall be made in full, without set-off or counterclaim or any deduction or withholding for or on account of any present or future taxes, duties, charges, fees or other amounts of any kind in immediately available, freely transferable, cleared funds for value on the relevant date on which such payments are due.

**FURTHER ASSURANCE**

12. Each of the parties agrees to perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably desirable to implement and/or give effect to this Agreement.

**NOTICES**

13.1 Any notice or other communication requiring to be given or serviced under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

In the case of LUL to [\_\_\_\_\_] at:

55 Broadway  
London SW1H 0BD

Fax:

In the case of the Transferor to [\_\_\_\_\_] at:

[Address]

Fax:

In the case of the Transferee to [\_\_\_\_\_] at:

[Address]

Fax:

13.2 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

13.3 Any payments to be made under this Agreement shall be made by electronic funds transfer to the account, details of which have been notified in writing by the payee to the payor in accordance with this clause 13.

**ASSIGNMENT**

14.1 Subject to clause 14.2, no party shall purport to assign, transfer, charge or otherwise deal with all or any of its rights under this Agreement nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the other parties provided that LUL shall not withhold such consent if such assignment, transfer or charge is in respect of amounts receivable under this Agreement and is entered into by the Transferor by way of security. Notwithstanding the foregoing, each of the Parties acknowledges and consents to the assignment made by the Transferor to its Funders by way of security of all its right, title and interest in and to all amounts receivable by the Transferor under or pursuant to this Agreement pursuant to a Borrower Deed of Charge dated [\_\_\_\_\_].

14.2 The Transferee:

(a) is hereby notified that the Transferor has assigned by way of security all of its right, title, interest and benefit, present and future, in, to and under this Agreement and any Transfer Agreement to the Borrower Security Trustee, that the beneficiaries (other than the Issuer) of the rights held by the Borrower Security Trustee have assigned their beneficial interest to the Issuer and that the Issuer as sole beneficiary of the rights held by the Borrower Security Trustee pursuant to the assignment referred to above has subsequently assigned by way of security all of its right, title, interest and benefit, present and future, in, to and under this Agreement and any Transfer Agreement to the Issuer Security Trustee;

(b) agrees that it shall, pursuant to the assignments referred to in paragraph (a) above and subject to paragraphs (d) and (e), pay all sums payable by the Transferee under this Agreement (and shall procure that any payments due to the Transferor pursuant to the Transfer Scheme are paid) directly to the Issuer Security Trustee into a bank account nominated for the purpose by the Issuer Security Trustee; and

(c) acknowledges that it has been notified of the assignments referred to in paragraph (a) above and that it has not received any other notice relating to the assignment of Transferor's rights under this Agreement; and

(d) agrees that subject to paragraph (e) it shall following the exercise of the Option and the payment by LUL of the Put Option Price (in each case as defined in and pursuant to the Put Option Agreement) (together with interest thereon calculated in accordance with clause 3.1, any interest calculated in accordance with clause 21 and any amounts payable pursuant to clause 8 (in each case of the Put Option Agreement)) in full to the Issuer Security Trustee, pay all sums payable by the Transferee under this Agreement (and shall procure that any payments due to the Transferor pursuant to the Transfer Scheme are paid) directly to the Borrower Security Trustee in to a bank account nominated for the purpose by the Borrower Security Trustee; and

(e) agrees that following the release of the Borrower Deed of Charge and the Issuer Deed of Charge (each as defined in the Put Option Agreement) pay all sums payable by the Transferee under this Agreement (and shall procure that any payments due to the Transferor pursuant to the Transfer Scheme are paid) directly to the Transferor.

14.3 Any payments made to the Issuer Security Trustee or Borrower Security Trustee under clauses 14.2(b) or 14.2(d) as the case may be shall discharge the Transferee's payment obligations to the Transferor pro tanto.

14.4 Any payments made to the Issuer Security Trustee or the Borrower Security Trustee under this clause 14 which is otherwise an amount due to be paid to Infracore shall be deemed to be received by Infracore when received by the Issuer Security Trustee or Borrower Security Trustee.

For the purposes of clause 14.2, 14.3 and 14.4:

**Borrower Security Trustee** means The Law Debenture Intermediary Corporation p.l.c. and includes any person or company for the time being acting as borrower security trustee under the Transferor's debt financing arrangements; and

**Issuer Security Trustee** means The Law Debenture Trust Corporation p.l.c. and includes any person or company for the time being acting as issuer security trustee under the Transferor's debt financing arrangements.

**RIGHTS OF THIRD PARTIES**

15.1 Other than as set out in clauses 15.2 and 15.3, 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.

15.2 The Issuer Security Trustee shall be entitled to enforce its rights under clauses 14.2(b) and 15.4 under the Contracts (Rights of Third Parties) Act 1999.

15.3 The Borrower Security Trustee shall be entitled to enforce its rights under clauses 14.2(d) and 15.5 under the Contracts (Rights of Third Parties) Act 1999.

15.4 Clauses 15.1 and 15.2 may not without the prior written consent of the Issuer Security Trustee be varied.

15.5 Clauses 15.1 and 15.3 may not without the prior written consent of the Borrower Security Trustee be varied.

**COUNTERPARTS**

16. This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**SUPREMACY OF THE TRANSFER SCHEME**

17. Each of the Transferor and the Transferee agrees with the other that, in the event of any inconsistency between any of the terms of this Agreement and any of the terms of the Transfer Scheme, the terms of the Transfer Scheme shall prevail.

**GOVERNING LAW**

18. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales as provided for in clauses 9.1 to 9.2 of the Dispute Resolution Agreement.

**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** under the **COMMON SEAL** of )  
**LONDON UNDERGROUND LIMITED** )  
in the presence of:)

Director

Secretary

**EXECUTED AND DELIVERED** as a )  
**DEED** under the **COMMON SEAL** of )  
**TUBE LINES LIMITED** )  
in the presence of:)

Director

Secretary

**EXECUTED AND DELIVERED** as a )  
**DEED** under the **COMMON SEAL** of )  
**[SUCCESSOR INFRACO] LIMITED** )  
in the presence of:)

Director

Secretary

## SCHEDULE 9

### DEFINITIONS

#### PART 1 - DEFINITION OF APPROVED DEBT

**Approved Debt** means, on any date, the amount which is equal to:

- (a) all amounts outstanding as at that date from each Finance Obligor to the Senior Funders (including amounts borrowed in respect of Reimbursable Law & Safety Change Costs and amounts borrowed by each Finance Obligor under standby facilities which the relevant Finance Obligor has stated in its drawing notice is being borrowed for the purposes stated in the relevant Funding Agreements) including principal, accrued interest, fees and other amounts payable thereunder and further including, to the extent incurred as a consequence of LUL default, any marginal increase in the rate of interest applying only by reason of a default in payment, provided that any amounts representing payments of principal and/or accrued interest owing to the Senior Funders which have not been paid and/or repaid by the due date therefor (including any applicable grace period) where this occurs before (but not on) the date of acceleration, shall only be included if:
- (i) in relation to a missed payment of principal and/or accrued interest which is a single missed payment or the first in a continuous sequence of missed payments, the Senior Funders have given written notice (**Senior Funders' Notice**) to LUL of such missed payment within thirty (30) days of the relevant payment default (including any applicable grace period); and
  - (ii) in respect of any subsequent missed payment of principal and/or accrued interest in a continuous sequence of missed payments including the missed payment in (i) above, LUL has not, within thirty (30) days after receipt of the Senior Funders' Notice, notified the Senior Funders that it will not treat any such subsequent missed payments as outstanding for the purposes of this definition, provided that, where any missed payment of principal and/or accrued interest is subsequently cured prior to the next due date under the relevant Funding Agreement, then that missed payment shall not be considered the first missed payment in a continuous sequence of missed payments and any notice given by LUL to the Senior Funders that it will not treat any subsequent missed payments as outstanding for the purposes of this definition shall be disregarded for the purposes of this definition,

unless any such amount remains outstanding as a direct result of a failure by LUL to comply with its obligations under the Transaction Documents in which event it shall be regarded as outstanding for the purposes of this definition,

plus:

- (b) (i) any amounts that would have been payable by any relevant Finance Obligor to any interest rate or other hedging counterparty if the relevant interest rate or other hedging arrangements (including for the avoidance of doubt guaranteed investment contracts) had been terminated on the date the amount of Approved Debt is being calculated; and

- (ii) any other breakage costs, premia or sums (including any early redemption amounts payable in respect of any bonds or other instruments and including any such sums that would have been incurred had such bonds or other instruments been redeemed on the date the amount of Approved Debt is being calculated and also including any cancellation fees on any unfunded instruments) payable by each Finance Obligor to the Senior Funders, on the date the amount of Approved Debt is being calculated, as a result of a prepayment or acceleration of payment obligations under the relevant Funding Agreements or the exercise of the Option (as defined in the Put Option Agreement) pursuant to the Put Option Agreement,

in the case of each of (a) and (b) above, pursuant to the terms of Funding Agreements:

- A which have been approved by LUL for the purposes of this definition;  
or
- B in relation to Required Finance to the extent that it has been included by the Statutory Arbiter in the cashflows referred to in paragraph 7 (*Cashflows*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts for the purpose of establishing the payment obligation to be assumed by LUL at a Periodic Review or Extraordinary Review and subject to compliance by Infraco with clause 31.4(d) of the PPP Contracts but, to the extent not all material terms in such Funding Agreements have been identified by the Statutory Arbiter during the Periodic Review, such remaining terms are substantially the same as the terms of other Funding Agreements which have been approved by LUL or are terms which otherwise have characteristics of Required Finance as directed pursuant to paragraph 1.4A (*Required Finance*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts; or
- C (1) in relation to standby or liquidity facilities (other than facilities in respect of Reimbursable Law & Safety Change Costs which shall in all circumstances be regarded as Approved Debt for the purposes of this definition) as it would be prudent for a Notional Infraco to have; or (2) for the purposes of financing Net Adverse Effects less than the Materiality Threshold, in each case, to the extent that the Statutory Arbiter has directed that such facilities would be prudent for a Notional Infraco to have pursuant to paragraph 1.4A (*Required Finance*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts and subject to compliance by Infraco with clause 31.4(d) of the PPP Contracts,

provided that the terms of any Funding Agreement falling within paragraphs A, B or C above shall not cease to be approved by reason of any subsequent amendment or variation thereof but in calculating Approved Debt at any time the parties shall disregard any amendment or variation to the terms of any such Funding Agreements which has not been approved by LUL, to the extent such amendment or variation increases LUL's liability under the terms of the Transaction Documents, the Put Option Agreement or the Stand Still Agreement,

less:

- (c) any amounts that would have been payable by any interest rate or other hedging counterparty to any relevant Finance Obligor pursuant to any Funding Agreement approved by LUL for the purposes of this definition if the relevant interest rate or other hedging arrangements had been terminated on the date the amount of Approved Debt is being calculated.

**PART 2 - DEFINITION OF APPROVED MEZZANINE DEBT**

**Approved Mezzanine Debt** means, on any date, the amount which is equal to:

- (a) all amounts outstanding as at that date from each Finance Obligor to the Mezzanine Funders without double counting (including amounts borrowed in respect of Reimbursable Law & Safety Change Costs and amounts borrowed by each Finance Obligor under standby facilities which the relevant Finance Obligor has stated in its drawing notice is being borrowed for the purposes stated in the relevant Funding Agreements) including principal, accrued interest, fees and other amounts payable thereunder and further including, to the extent incurred as a consequence of LUL default or as a direct result of the making of such payment being prohibited or restricted under the terms of any Funding Agreement (including where and to the extent that the relevant Finance Obligor is unable to make a payment to the Mezzanine Funders by virtue of being required, under the terms of a Funding Agreement, to apply funds which are then available for application in accordance with the Funding Agreements to other obligations in priority to the obligation to make payment to the Mezzanine Funders), any marginal increase in the rate of interest applying only by reason of a default in payment, provided that any amounts representing payments of principal and/or accrued interest owing to the Mezzanine Funders which have not been paid and/or repaid by the due date therefor (including any applicable grace period) where this occurs before (but not on) the date of acceleration, shall only be included if:
- (i) in relation to a missed payment of principal and/or accrued interest which is a single missed payment or the first in a continuous sequence of missed payments, the Mezzanine Funders have given written notice (**Mezzanine Funders' Notice**) to LUL of such missed payment within thirty (30) days of the relevant payment default (including any applicable grace period); and
  - (ii) in respect of any subsequent missed payment of principal and/or accrued interest in a continuous sequence of missed payments including the missed payment in (i) above, LUL has not, within thirty (30) days after receipt of the Mezzanine Funders' Notice, notified the Mezzanine Funders that it will not treat any such subsequent missed payments as outstanding for the purposes of this definition, provided that, where any missed payment of principal and/or accrued interest is subsequently cured prior to the next due date under the relevant Funding Agreement, then that missed payment shall not be considered the first missed payment in a continuous sequence of missed payments and any notice given by LUL to the Mezzanine Funders that it will not treat any subsequent missed payments as outstanding for the purposes of this definition shall be disregarded for the purposes of this definition,

unless any such amount remains outstanding as a direct result of a failure by LUL to comply with its obligations under the Transaction Documents or as a direct result of the making of such payment being prohibited or restricted under the terms of any Funding Agreement (including where and to the extent that the relevant Finance Obligor is unable to make a payment to the Mezzanine Funders by virtue of being required, under the terms of a Funding Agreement, to apply funds which are then available for application in accordance with the Funding

Agreements to other obligations in priority to the obligation to make payment to the Mezzanine Funders) in either of which events it shall be regarded as outstanding for the purposes of this definition,

plus:

- (b) (i) any amounts that would have been payable by any relevant Finance Obligor to any interest rate or other hedging counterparty if the relevant interest rate or other hedging arrangements had been terminated on the date the amount of Approved Mezzanine Debt is being calculated; and
- (ii) any other breakage costs, premia or sums (including any amounts payable in respect of any bonds or other instruments) payable by each Finance Obligor to the Mezzanine Funders, on the date the amount of Approved Mezzanine Debt is being calculated, as a result of a prepayment or acceleration of payment obligations under the relevant Funding Agreements or the exercise of the Option (as defined in the Put Option Agreement) pursuant to the Put Option Agreement,

in the case of each of (a) and (b) above, pursuant to the terms of Funding Agreements:

A which have been approved by LUL for the purposes of this definition; or

B in relation to Required Finance to the extent that it has been included by the Statutory Arbiter in the cashflows referred to in paragraph 7 (*Cashflows*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts for the purpose of establishing the payment obligation to be assumed by LUL at a Periodic Review or Extraordinary Review and subject to compliance by Infraco with clause 31.4(d) of the PPP Contracts but, to the extent not all material terms in such Funding Agreements have been identified by the Statutory Arbiter during the Periodic Review, such remaining terms are substantially the same as the terms of other Funding Agreements which have been approved by LUL or are terms which otherwise have characteristics of Required Finance as directed pursuant to paragraph 1.4A (*Required Finance*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts; or

C (1) in relation to standby or liquidity facilities (other than facilities in respect of Reimbursable Law & Safety Change Costs which shall in all circumstances be regarded as Approved Debt for the purposes of this definition) as it would be prudent for a Notional Infraco to have; or (2) for the purposes of financing Net Adverse Effects less than the Materiality Threshold, in each case, to the extent that the Statutory Arbiter has directed that such facilities would be prudent for a Notional Infraco to have pursuant to paragraph 1.4A (*Required Finance*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts and subject to compliance by Infraco with clause 31.4(d) of the PPP Contracts,

provided that the terms of any Funding Agreement falling within paragraphs A, B or C above shall not cease to be approved by reason of any subsequent amendment or variation thereof but in calculating Approved Mezzanine Debt at any time the parties shall disregard any amendment or variation to the terms of any such Funding Agreements which has not been approved by LUL, to the extent such amendment or variation increases LUL's liability under the terms of

the Transaction Documents, the Put Option Agreement or the Stand Still Agreement,

less:

- (c) any amounts that would have been payable by any interest rate or other hedging counterparty to any relevant Finance Obligor pursuant to any Funding Agreement approved by LUL for the purposes of this definition if the relevant interest rate or other hedging arrangements had been terminated on the date the amount of Approved Mezzanine Debt is being calculated;

### PART 3 - MISCELLANEOUS DEFINITIONS

**DCF Amount** means an amount equal to the amount calculated as at the Contract Disposal Calculation Date in accordance with the following formula:

$$A + B + C - (D + E + F + G)$$

where:

**A** equals the amount which is the Net Present Value of the sum of the forecast Baseline ISC and the forecast ISC Adjustment (excluding that part of the forecast ISC Adjustment provided for in B) over the Remaining Contract Period (each as agreed by the parties on or prior to the Transfer Date or subsequently agreed by the parties or determined by the Statutory Arbiter as part of the Periodic Review at the beginning of the Review Period in which the Mandatory Sale Notice was served) together with the Net Present Value of any amounts which LUL has stated pursuant to paragraph 2.1 (*Limitations*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) that it wishes to make or pay upon the expiry of the Contract adjusted to reflect either:

- (i) if the circumstances described in clause 40.1(b) (*Infraco Breach*) of the PPP Contract apply, the level of abatement and/or bonus to Baseline ISC arising as a consequence of the average performance scores (excluding that part of the Aggregate Capability score provided for in B) achieved by Infraco under the Performance Measurement Code during the last three (3) complete Payment Periods prior to the date on which the Warning Notice was served upon Infraco; or
- (ii) if any of the circumstances described in clause 40.1 (other than clause 40.1(b)) (*Infraco Breach*), of the PPP Contract apply, the level of abatement and/or bonus to Baseline ISC arising as a consequence of the average performance scores (excluding that part of the Aggregate Capability score provided for in B) achieved by Infraco under the Performance Measurement Code during the last three (3) complete Payment Periods prior to the Contract Disposal Calculation Date for which the information required to calculate such scores is available,

assuming that Infraco's performance scores do not improve over the period of 7.5 years following the Contract Disposal Calculation Date and that thereafter performance scores meet the level of performance assumed in the forecast ISC Adjustment for all categories of measurement;

**B** equals the amount which is the Net Present Value of the forecast ISC Adjustment arising from Aggregate Capability scores relating to Specified Line Upgrades, over the Remaining Contract Period (each as agreed by the parties on or prior to the Transfer Date or subsequently agreed by the parties or determined by the Statutory Arbiter as part of the Periodic Review at the beginning of the Review Period in which the Mandatory

Sale Notice was served), PROVIDED THAT, in respect of any Specified Line Upgrade:

- (i) subject to (ii) below, the forecast ISC Adjustment arising from Aggregate Capability scores relating to such Specified Line Upgrade shall be adjusted to reflect either:
  - (1) if the circumstances described in clause 40.1(b) (*Infraco Breach*) of the PPP Contract apply, the level of abatement and/or bonus to Baseline ISC arising as a consequence of the average Aggregate Capability score relating to Specified Line Upgrades achieved by Infraco under the Performance Measurement Code during the last three (3) complete Payment Periods prior to the date on which the Warning Notice was served upon Infraco; or
  - (2) if any of the circumstances described in clause 40.1 (other than clause 40.1(b)) (*Infraco Breach*), of the PPP Contract apply, the level of abatement and/or bonus to Baseline ISC arising as a consequence of the average Aggregate Capability score relating to Specified Line Upgrades achieved by Infraco under the Performance Measurement Code during the last three (3) complete Payment Periods prior to the Contract Disposal Calculation Date for which the information required to calculate such scores is available; and
- (ii) it is assumed that such Aggregate Capability scores improve, on the date on which and to the extent that (as agreed by the parties or determined by Adjudicator, having regard to the progress as at the Contract Disposal Calculation Date of the implementation of the Specified Line Upgrade as against the applicable Milestones) such Specified Line Upgrade is expected to be Delivered into Service,

PROVIDED THAT there shall be no double counting between any element of A above and any element of this paragraph B;

**C** equals the sum of the amounts of any:

- (i) Sellback Costs;
- (ii) Reimbursable Law & Safety Change Costs; and
- (iii) to the extent not included in (i) or (ii), any Exceptional Amounts, or amounts payable in accordance with Schedule 5.7 (*Non-ISC Invoices*) to the PPP Contracts, either previously agreed with LUL as being due to be paid prior to the Contract Disposal Calculation Date or payable to the Infraco under the terms of the Transaction Documents or the Share Sale and Purchase Agreement in respect of costs, claims or losses of the Infraco which have not been paid at the Contract Disposal Calculation Date;

**D** equals the amount which is the Net Present Value of the forecast negative cashflows in respect of those categories of cost referred to in paragraph 7.2(b) (*Negative Cashflows*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) for the Remaining Contract Period agreed by the

parties on or prior to the Transfer Date or subsequently agreed by the parties or determined by the Statutory Arbiter as part of the Periodic Review at the beginning of the Review Period in which the Mandatory Sale Notice was served excluding any such costs also provided for as Rectification Costs;

- E** equals Rectification Costs less the amount of any insurance proceeds receivable to the extent that these accrue to LUL or any successor to the Infraco;
- F** equals the reasonable and proper costs of LUL incurred in connection with the exercise of the rights of LUL under clauses 40 (*Warning Notices and Default Notices*) and 41 (Mandatory Sale) of the PPP Contract, including in requesting tenders from potential Permitted Transferees and evaluating those tenders with a view to entering into a Contract Disposition Agreement with, and completing a Contract Sale to, a Permitted Transferee; and
- G** equals the Performance Repayment Amount, to the extent not recovered by LUL pursuant to clause 18 of the PPP Contract;

provided that the DCF Amount will not in any circumstances exceed the aggregate of (i) 100% of the Approved Debt and (ii) 100% of the Approved Mezzanine Debt and (iii) the best estimate that can be made as at the Contract Disposal Calculation Date of any additional amount in respect of Taxation (as defined in clause 41.13(b) (*Tax*) of the PPP Contract) which would be due on applying clause 41.13 (*Tax*) of the PPP Contract to the amounts in (i) and (ii) above;

**Finance Obligor** means:

- (a) in relation to JNP:
  - (i) JNP; and
  - (ii) Tube Lines (Holdings) Limited;
- (b) in relation to BCV:
  - (i) BCV; and
  - (ii) Metronet Rail BCV Finance plc; and
- (c) in relation to SSL:
  - (i) SSL; and
  - (ii) Metronet Rail SSL Finance plc,

and any other company controlled (as defined in the definition of "Affiliate") by, as applicable, Metronet Rail BCV Holdings Limited or Metronet Rail SSL Holdings Limited and established to raise finance for the purposes of on-lending the proceeds thereof to BCV or SSL (as applicable);

**Fixed Amounts** means those amounts specified in relation to Approved Debt, Approved Mezzanine Debt and Shareholder amounts set out in Annex 3 of Schedule 1.9 (*The Statutory Arbiter and Reviews*) as amended from time to time pursuant to subparagraphs 1.5(c) of Schedule 1.9 (*The Statutory Arbiter and Reviews*);

**Funders** means all or any of the persons who provide, or who act as agent, trustee or account bank in respect of the provision of financing, hedging or funding to a Finance Obligor including, where the context so permits:

- (a) prospective financiers or funders (including, without limitation, lessors), rating agencies, guarantors, swap counterparties and monoline insurers and their respective successors in title;
- (b) any person, apart from those persons excluded from this definition, who provides financing or funding to the immediate parent company of Infracore which financing or funding is advanced to Infracore by the immediate parent company of Infracore by way of on-lending; and
- (c) in the case of JNP, any company established to raise finance for the purposes of on-lending the proceeds thereof to JNP;

save for (i) excluding any company that falls within paragraph (c) of this definition, the Sponsors or Initial Shareholders or any shareholder or subsidiary in each case of any Sponsor or Initial Shareholder and (ii) (save in respect of and to the extent of Approved Mezzanine Debt) the immediate parent company of Infracore (the persons in sub-paragraphs (i) and (ii) above being referred to for the purpose of this definition as **Equity Related Persons**) provided that in the case of JNP, any Equity Related Person shall be deemed to be a "Funder" to the extent that any such person provides, or acts as agent, trustee or account bank in respect of the provision of financing, hedging or funding to a Finance Obligor, when:

- (i) such Equity Related Person replaces a person who was a Funder in respect of all or part of that Funder's provision of financing, hedging or funding which was Approved Debt and/or Approved Mezzanine Debt (as the case may be); and/or
- (ii) such Equity Related Person provides financing, hedging or funding in relation to Required Finance which comprises Eligible Debt or Base Debt or which otherwise is provided on terms which the Statutory Arbitrator has directed (pursuant to paragraph 1.4A(a) of schedule 1.9) has characteristics which are consistent with the then market terms for senior or mezzanine lending (as the case may be); and/or
- (iii) LUL otherwise agrees that such Equity Related Person shall be treated as a Funder in respect of any amount of Approved Debt or Approved Mezzanine Debt (as the case may be), notwithstanding that such person would otherwise not be a Funder;

provided however that in relation to any senior debt designated as Approved Debt the cumulative total principal amount held by all such Equity Related Persons does not exceed 33% of the principal amount of such Approved Debt.

**Mezzanine Funders** means:

- (a) in relation to JNP, the Funders in relation to the Term C Facility and the Term D Facility as those facilities are defined in an Issuer/Borrower Facility Agreement dated on or about the date of a Second Supplemental Agreement made between

LUL and JNP and made between JNP, Tube Lines (Finance) plc and The Law Debenture Trust Corporation PLC (*the IBFA*); and

- (b) in relation to JNP, save in respect of amounts outstanding under the IBFA, the Funders to whom the repayment of amounts owing to them under Funding Agreements is subordinated to the prior payment of amounts owed by any Finance Obligor in relation to the IBFA;

**Qualifying Costs** means the amount (if any) by which the lower of:

- (a) the aggregate costs that Infraco actually incurred in performing the Infraco Obligations during a Review Period; or
- (b) the aggregate costs that Infraco would have incurred in performing the Infraco Obligations during a Review Period in an overall efficient and economic manner and in accordance with Good Industry Practice with regard to the extent applicable to the characteristics of a Notional Infraco,

(referred to below as the *Eligible Costs*) differs from the best estimate of the aggregate of those costs (referred to below as *Expected Costs*) that a Notional Infraco would have incurred in performing the Infraco Obligations during that Review Period:

- (x) as agreed between the parties; or
- (y) as directed by the Statutory Arbiter at the Review Date at the start of the Review Period (being the costs directed by the Statutory Arbiter to be included in the cashflows referred to in paragraph 7 of Schedule 1.9); or
- (z) (in relation to the first Review Period only) as agreed between the parties and at the date hereof and jointly presented to the Statutory Arbiter as set out in Annex 5 (*Baseline for Net Adverse Effects*) to Schedule 1.9 of the PPP Contracts (*The Statutory Arbiter and Reviews*),

and, in the case of sub-paragraphs (y) and (z) above, as revised subsequently (by agreement or determination) to reflect all subsequent agreements or determinations pursuant to the terms of the Transaction Documents concerning costs of Infraco that are eligible for recovery from LUL.

Any Upfront Benefit, Over Time Benefit or LUL's entitlement to an amount of Benefit accruing from a Refinancing other than an Initial Refinancing shall be excluded from the determination of Eligible Costs and Expected Costs.

Where Eligible Costs exceed the Expected Costs the difference shall be expressed as a positive number, and where Eligible Costs are less than the Expected Costs that difference shall be expressed as a negative number.

For the purposes of this definition, costs shall be recognised when they are paid or forecast to be paid by Infraco and not before and shall include any liabilities or claims once so paid or forecast to be paid. Also, costs shall include both capital and operating costs or benefits and may include Taxation other than either VAT or Taxation on or calculated by reference to, income, profits or gains (unless, in either case, such Taxation arises as a direct result of a Qualifying Change of Law that is a Discriminatory Change of Tax Law) but shall not include Infraco Finance Costs, the amount of any Sellback Costs or Reimbursable Law & Safety Change Costs;

**Qualifying Revenues** means the amount (if any) by which the higher of:

- (a) the aggregate of the ISC and the ISC Adjustment that Infraco actually received (or would have received but for any reduction in ISC as a consequence of any

Upfront Benefit, Over Time Benefit or LUL's entitlement to an amount of Benefit accruing from a Refinancing other than the Initial Refinancing) during a Review Period;

- (b) the aggregate of the ISC and the ISC Adjustment that would have been received by Infraco in performing the Infraco Obligations during a Review Period in an overall efficient and economic manner and in accordance with Good Industry Practice with regard to the extent applicable to the characteristics of a Notional Infraco,

(referred to below as the **Eligible ISC**) differs from the best estimate of the aggregate ISC and ISC Adjustments that would have been received by a Notional Infraco in performing the Infraco Obligations during a Review Period:

- (x) as agreed between the parties or
- (y) as directed by the Statutory Arbiter at the Review Date at the start of the Review Period (being ISC which the Statutory Arbiter has directed pursuant to paragraph 1.5(b) of Schedule 1.9); or
- (z) (in relation to the first Review Period only) as agreed between the parties and at the date hereof and jointly presented to the Statutory Arbiter as set out in Annex 5 (*Baseline for Net Adverse Effects*) to Schedule 1.9 of the PPP Contracts (*The Statutory Arbiter and Reviews*),

and, in the case of sub-paragraphs (y) and (z) above, as revised subsequently (by agreement or determination) to reflect all subsequent agreements or determinations pursuant to the terms of the Transaction Documents concerning costs of Infraco that are eligible for recovery from LUL, (referred to below as the *Expected ISC*).

Any Upfront Benefit, Over Time Benefit or LUL's entitlement to an amount of Benefit accruing from a Refinancing other than the Initial Refinancing shall be excluded from the determination of Eligible ISC and Expected ISC.

Where the Eligible ISC exceeds the Expected ISC that difference shall be expressed as a negative number, and where the Eligible ISC is less than the Expected ISC that difference shall be expressed as a positive number;

**Senior Funders** means the Funders, except to the extent acting in their capacity as Mezzanine Funders;

**Underpinned Amount** means:

- (a) the DCF Amount if the DCF Amount exceeds the aggregate of the 95% Amount together with the best estimate which can be made as at the Contract Disposal Calculation Date of any additional amount in respect of Taxation (as defined in clause 41.13(b) of the PPP Contract) which would be payable on the 95% Amount as determined upon the assumptions and bases set out in clause 41.13(d) of the PPP Contract; or
- (b) the 95% Amount in all other circumstances;

**SCHEDULE 10****INFORMATION SHARING**

## Schedule 1.13 to the Service Contract

## Information

**Part (A): Half-year reporting**

1. Infraco shall provide LUL (in relation to forward looking statements, for the remainder of the current Contract Year and for the following two Contract Years) with the information contained in such schedule as may be agreed for the purposes of this paragraph by Infraco and LUL from time to time (the "Half-year reporting schedule") for each period ending 31 March, and 30 September of each year (each date being a "half-year date" and each period being a "Period") no later than 40 business days after each half-year date. For the purposes Part (A) of this Schedule, a cost, expense or Claim (or a change to or discrepancy in such a cost, expense or Claim) shall be "material" in the context of a Period if it relates to an amount in excess of the lesser of £5 million or 10% for any line item of the Half-year reporting schedule during that Period when compared to the line item contained in the preceding period.
2. Infraco shall also provide the following information (together with reasonable details of supporting calculations and assumptions to enable LUL to verify the accuracy of the information):
  - a. the proportion of scheduled amounts in the drawdown schedule which are Deviation Amounts (as defined in the IBFA);
  - b. the cumulative aggregate of the Historic Deviation Amounts (as defined in the CTA) incurred by the Infraco since the Transfer Date; and
  - c. the Infraco's estimate, in good faith, of the Deviation Amounts to be incurred by the Infraco during each Period for the remainder of the current Contract Year and the following two Contract Years.
3. Infraco shall provide the following in the Half-year reporting schedule:
  - a. The aggregate amounts paid by the Infraco to the Seconding Parties under the Secondment Agreement.
  - b. The amount of Liquidated Damages (as defined in the CTA) paid to the Infraco under the Key Sub-Contracts since the previous half-year date.
  - c. A list of new Key Sub-Contracts contracts entered since the previous half-year date or proposed to be entered into within the 12 months from the relevant half-year date by the Infraco.
  - d. Details of any material breach or material under-performance of counterparties under the Key Sub-Contracts.
  - e. Details of the development of the rolling stock procurement programme in relation to the Jubilee Line and Piccadilly Line.
  - f. A statement of progress in relation to the Milestone Events (all as defined in the IBFA).

**Part (B): Periodic Reporting (4 weekly)**

The Infraco shall deliver to LUL:

1. Promptly, upon becoming aware,
  - a) a summary of any material litigation, arbitration or administrative proceedings which are current, threatened or pending against any Major Project Party (as defined under the CTA),
  - b) details of any material default by any Major Project Party under any material contract to which the Infraco and that Major Project Party are a parties,
  - c) any notice of communication from any regulatory body, court, organisation or other person prohibiting, suspending, varying or requiring the halting of all or any part of any activity or process carried out by any Major Project Party which is material to the performance by Infraco of the Infraco Obligations, and
  - d) any matter which Infraco becomes aware, which might materially adversely effect the ability of any Major Project Party to perform any of its obligations under any material contract to which the Infraco and that Major Project Party are a parties.
2. On the date four (4) weeks from the date of the Second Supplemental Agreement to the Service Contract and on the first day of each Payment Period thereafter, details of the Milestone Events (as defined in the IBFA) that have been achieved by Infraco in the previous (4) four week period.

**Part (C): General provisions**

In relation to the provisions of this schedule 1.13 (and notwithstanding any provision to the contrary):

1. LUL acknowledges and agrees that any and all information provided pursuant to this Schedule 1.13 (the "Schedule 1.13 Information") shall constitute Commercially Sensitive Information for the purposes of clause 48 of the Contract.
2. If LUL (or any person to whom LUL has disclosed such information) makes use of or discloses any Schedule 1.13 Information otherwise than in accordance with clause 48 of the Contract, the following provisions shall apply:
  - a. LUL and Infraco shall meet promptly following such unauthorised disclosure to discuss the circumstances surrounding such disclosure and to agree measures that are reasonably appropriate to ensure unauthorised disclosure of Schedule 1.13 Information will not recur;
  - b. If LUL and Infraco cannot agree or have not agreed such measures within three months of Infraco informing LUL of such unauthorised disclosure the matter shall be taken to dispute resolution for determination; and
  - c. until such measures are agreed or determined, Infraco shall not be obliged to comply with this Schedule 1.13 in respect of the Schedule 1.13 Information (to the extent that such information is not otherwise required to be provided by other provisions of this contract).

This paragraph will not apply to disclosures made by LUL to the Arbiter or pursuant to its obligations under the Freedom of Information Act 2000.

3. It is acknowledged and agreed that this Schedule 1.13 gives LUL no right of approval in relation to the subject matter of the Schedule 1.13 Information (unless such approval is otherwise required). Questions arising from Schedule 1.13 Information shall be addressed pursuant to paragraph 7 below.
4. Infraco shall use all reasonable endeavours to ensure that the Schedule 1.13 Information is complete and accurate in all material respects and not misleading in any material respect.
5. If LUL considers, acting reasonably, that Infraco has either (i) failed to comply in any material respect with its obligations in connection with this Schedule 1.13 or (ii) provided information that appears to contain any manifest error, LUL may give notice in writing to Infraco specifying such non-compliance and/or error. Infraco shall remedy such non-compliance and/or error promptly, and in any event within 30 days of the date of such notice.
6. Before LUL takes any action pursuant to Clause 22, the parties shall meet promptly to discuss any failure by Infraco to comply with this Schedule 1.13.
7. Both parties shall, promptly upon receiving a request from either party, procure the attendance of its senior management with suitable knowledge and experience to attend a meeting following the delivery of the half-yearly report described in Part A above to discuss its contents and any issues arising from paragraph 3 above. Nothing in this provision shall discharge or relieve Infraco in any way of its obligations set out in the Transaction Documents.

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

**SIGNED** by )  
and )  
on behalf of ) /s/ Naomi Connell  
**LONDON UNDERGROUND LIMITED** )

**SIGNED** by )  
and )  
for and on behalf of ) /s/ Stephen Hurrell  
**TUBE LINES LIMITED** )

DATED

12 MAY 2004

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**LONDON UNDERGROUND LIMITED**

**- AND -**

**TUBE LINES LIMITED**

**SECOND SUPPLEMENTAL AGREEMENT**

**- relating to -**

**the**

**LONDON UNDERGROUND PUBLIC PRIVATE PARTNERSHIP**

**Lovells**

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