

SCHEDULE 12

Part A

Transfer of Staff

TUPE

1. The Contractor acknowledges that the Transfer of Undertakings (Protection of Employment) Regulations 1981 (*TUPE*) will apply to all of those employees of the Company engaged in or associated with the maintenance and cleaning services (including, for the avoidance of doubt, those engaged in or associated with materials handling or purchasing) for which the Contractor will become responsible under this Contract and that, with effect from the Transfer Date, the Contractor will, subject to the provisions of paragraph 2, assume all liabilities in connection with the Transferring Employees. If, on the Transfer Date, the number of such employees is greater or fewer than at 24 November 1994, the Usage Payments will be adjusted in accordance with the provisions of paragraph 8 of Part A of Schedule 10.

INDEMNITIES

2.1 In addition to the provisions of Clause 31, the Contractor shall indemnify and hold harmless the Company against all costs, claims, liabilities and expenses arising out of or in connection with any act or omission of the Contractor connected with the employment or proposed employment of the Transferring Employees by the Contractor on and after the Transfer Date, including but not limited to breach of statutory duty, any claim for damages for breach of contract and/or for compensation for unfair or wrongful dismissal or redundancy but excluding any claim for failure to provide comparable superannuation benefits and the Contractor shall further indemnify and hold harmless the Company against all costs, claims, liabilities and expenses in respect of death or personal injury to the Transferring Employees arising

out of or in connection with the employment of the Transferring Employees whether by the Contractor on or after the Transfer Date or by the Company prior to the Transfer Date.

2.2 The Company shall indemnify and hold harmless the Contractor against all costs, claims, liabilities and expenses arising out of or in connection with any act or omission of the Company in connection with the employment of the Transferring Employees by the Company prior to the Transfer Date, including but not limited to breach of statutory duty, and any claim for damages for breach of contract provided always that the Company's obligation to indemnify the Contractor as aforesaid shall not apply to any costs, liabilities, claims or expenses arising out of or in connection with death or personal injury of the Transferring Employees. For the avoidance of doubt, nothing in this paragraph 2.2 shall oblige the Company to indemnify the Contractor against any costs, claims, liabilities or expenses arising out of or in connection with any failure by the Contractor to provide the Transferring Employees with comparable superannuation benefits.

2.3 The Company and the Contractor acknowledge and agree the following in relation to the indemnities given to each other under paragraphs 2.1 and 2.2 and claims from third parties (*Third Party Claims*) which may lead to claims under such indemnities:

- (a) a party with notice of a Third Party Claim (the *Indemnified Party*) shall notify the other party as soon as reasonably practicable;
- (b) the Indemnified Party shall not compromise or settle a Third Party Claim without the other party's consent which shall not be unreasonably withheld or delayed;
- (c) the Indemnified Party shall take all such steps reasonably required by the other party to mitigate any costs, claims, liabilities and expenses claimed under the

indemnity and to avoid, dispute, resist, appeal, compromise, admit or contest any Third Party Claims;

- (d) the Indemnified Party shall where reasonably required transfer to the other party conduct of any Third Party Claims or, if no such transfer is required, consult where reasonably required with the other party about the conduct of the proceedings;
- (e) the Indemnified Party shall take all steps reasonably required by the other party in connection with the conduct and defence of any proceedings.

STAFF TRAVEL FACILITIES

LT Travel Passes

3.1.1 The Company shall procure that all Transferring Employees (together with their eligible spouses and dependants and children) shall continue to have the use (subject to the terms and conditions of issue as varied from time to time) of such London Regional Transport staff travel facilities as they enjoy at the Transfer Date. The obligations of the Company set out in this paragraph 3.1 shall terminate:

- (a) in relation to any Transferring Employees including any eligible spouse or dependant or children, on that Transferring Employee ceasing to be employed by the Contractor; or
- (b) subject to paragraph 3.1.2, in relation to any Transferring Employee, eligible former Transferring Employee, or eligible spouse or dependant or children, on that person ceasing to be eligible under London Regional Transport's terms and conditions for issue and retention of staff travel facilities current at the Transfer Date taking into account service with the Company and the Contractor; or

(c) if the Contractor neglects to use reasonable endeavours to ensure that such persons comply with the terms and conditions of issue of such travel facilities and that they surrender their passes on ceasing to be entitled to them.

3.1.2 Where any Transferring Employee subsequently leaves the employment of the Contractor by virtue of a transfer which is subject to TUPE, then for the purposes of calculating whether or not the Company may continue to provide the staff travel facilities to that Transferring Employee only actual service with the Company and the Contractor will be counted, and no credit for prospective future service will be given in respect of either the transfer to or from the Contractor.

3.1.3 The Company shall be entitled to withdraw such staff travel facilities from any person who infringes or ceases to be entitled under the terms and conditions of issue of such staff travel facilities in force from time to time.

3.1.4 The obligation of the Company under this Contract to provide staff travel passes shall be reviewed by the Company on deregulation of bus services in London and may be revised or withdrawn by the Company.

3.1.5 The Contractor shall advise the Company (or a person nominated by the Company) when Transferring Employees with staff travel passes cease to be employed by the Contractor and shall provide the Company or its nominated representative with all information reasonably required about the circumstances in which the employment ceased.

BR Privilege Facilities

3.2.1 With effect from the Transfer Date the Contractor shall enter into an agreement with London Regional Transport or the Company relating to British Rail privilege facilities for Transferring Employees substantially in the form set out in Part B of this Schedule.

COMPANY CARS

4. With effect from the Transfer Date the Contractor shall enter into an agreement with London Regional Transport or the Company relating to company cars held by Transferring Employees (if any) substantially in the form set out in Part C of this Schedule.

LOANS

5. Notwithstanding any other provisions of this Contract, the Company shall not recover outstanding loans from the Transferring Employees prior to the Transfer Date but the Contractor hereby agrees within 28 days of the Transfer Date to pay to the Company in respect of these outstanding loans the amount which was outstanding on the Transfer Date.

COMPANY'S CONTRACTORS

6. For the avoidance of doubt, the provisions of this Part A of Schedule 12 shall not apply to the employees of the Company's contractors.

