

Memorandum of Understanding

These terms represent an agreed position between DfT and TfL. This assumes that the LUL nominees are successful in their respective bids for the Metronet concessions. The Memorandum of Understanding applies to the BCV and SSL concessions only.

This Memorandum of Understanding (“MoU”) sets out the present basis on which the Secretary of State for Transport (“SofS”) is in principle able to support Transport for London’s (“TfL’s”) proposals for taking forward the BCV and SSL concessions as set out in the Funding Letter dated 4th October 2007. It does not represent a binding offer or commitment to provide further funding.

1. LUL Nominee bid

1.1 It is understood that LUL Nominee companies may make bids to the PPP Administrator to acquire, respectively, the BCV and SSL concessions (the “Acquisition”) for the purpose of warehousing these for a period from the transfer to the LUL Nominee companies (“Interim Period”) until a permanent structure (“Permanent Structure”) can be implemented.

1.2 Any funding and/or support for the Acquisition, dealing with the existing debt and operational costs during the Interim Period, will be provided on the following basis, within the limits set out in the Funding letter dated 4th October 2007 (together the “Interim Funding Arrangements”):

1.2.1 Existing debt: Principally to cover the existing Metronet debt:

- a) In the case of a debt restructuring by (i) a DfT grant (or loan) to TfL to repay in full the commercial bank and EIB facilities (including the unwind costs of hedging), and (ii) any new SofS letter of comfort required to support a TfL debt service guarantee in relation to the outstanding Metronet bonds or any replacements for such bonds (which would replace the existing comfort letters provided for the existing Metronet debt); or
- b) In the case of the Put Option being exercised by a DfT grant (or loan) to TfL to fund the Put Option price; and

1.2.2 Interim Period funding: Funding for the operations during the Interim Period will be provided through a grant (or loan) from DfT to TfL (“the Interim Funding Grant (or Loan)”). In each case, terms and conditions are to be agreed.

The Value for Money and deliverability evaluation of debt restructuring vs. Put Option will be performed on a joint basis by DfT and TfL, and the final decision will be taken jointly.

1.3 Savings arising from these revised funding arrangements will be used to support PPP outputs.

1.4 From 4th October 2007, the Interim Funding Arrangements and the SofS’ support for these will replace all previous funding statements contained within letters from the SofS and DfT to the Mayor, TfL and/or LUL in respect of the Metronet concessions. The SofS’ funding commitments and support in respect of the Tube Lines concession are unchanged by this MoU. The MoU also removes the ring-fencing of the Tube PPPs.

1.5 DfT will seek necessary State Aid clearances and will support TfL in expediting both the transfer to an LUL Nominee, and the post Metronet permanent structure; DfT and TfL will work closely accordingly. TfL will provide assistance as required including provision of information and drafting of submissions. TfL will consult DfT in advance of any actions being taken that may have State Aid implications.

2. Delivering Value for Money — Permanent Structure

2.1 The presumption is that a new Permanent Structure for the BCV and SSL concessions will be implemented within the next 9-30 months, subject to State Aid decisions, which will divide into the following two periods:

2.1.1. A period of up to 6 months from the 18th January 2008, to evaluate the options for the Permanent Structure and to identify the preferred Permanent Structure (“Evaluation Period”). The Evaluation Period can be extended by mutual agreement of both the SofS and the Mayor.

2.1.2. Depending on the nature of the preferred Permanent Structure, a period of between 3-24 months for implementation (“Implementation Period”), which should in any event conclude no later than the start of the Second Review Period.

2.2. TfL and DfT will agree, as a condition of DfT funding, to set up a Joint Steering Group (“Steering Group”) to evaluate the options for the Permanent Structure and to recommend a Permanent Structure. The Steering Group will set up a joint working group between TfL, HMG and their independent advisors. The Steering Group will report to DfT Ministers and the Mayor who will agree the preferred Permanent Structure. The Steering Group will remain in existence to support the implementation of the preferred Permanent Structure. The responsibility for operations and delivery will remain with LUL and the Mayor. However, the Steering Group will need to be apprised on a timely basis of any operational and delivery decisions which may have material implications on one (or several) of the Permanent Structure options being evaluated by the Steering Group.

2.3. The objective is to identify a Permanent Structure which

2.3.1 provides a stable and safe operational framework for the Tube

2.3.2 delivers the modernisation, upgrade and maintenance of the Tube infrastructure;

2.3.3 is affordable; and

2.3.4 delivers Value for Money for the public sector in accordance with relevant statutory duties of the Mayor and the SofS.

2.4. It is currently envisaged that the Permanent Structure will continue to involve private sector participation and risk transfer. The consideration of the Permanent Structure will need to take into account factors such as delivery capacity, management of systems integration risks, ability to maximise benefit realisation, price efficiency through competition and incentivisation, whole life costing, benefits of external funder due diligence, etc.. However, the Metronet experience provides a number of useful lessons and these should be reflected in the Permanent Structure to the extent reasonable. Any evaluation of alternative structures will be undertaken against a base case of the existing PPP structure which will act as a benchmark against which improvements will be evaluated.

2.5. The implementation of the Permanent Structure should be without prejudice to the JNP concession, which will remain as currently structured save for any consequential changes agreed between DfT and TfL and needed to implement the transfer to the LUL Nominee companies or to the Permanent Structure.

2.6. As necessary, DfT will seek State Aid clearances and will support TfL in expediting the implementation of the Permanent Structure may require State Aid clearance and this will need to be taken into consideration in evaluating the options for the Permanent Structure. TfL will provide the necessary support to DfT in seeking such clearance as set out in paragraph 1.5 above.

3. Transparency and accountability

3.1 It is the SoS' present intention that the role of the PPP Arbiter will remain for both the Interim Period and the Permanent Structure. As such, the Arbiter will continue to benchmark the performance of all tube PPP concessions, including the LUL nominee, by way of processes upon which all relevant participants will be consulted, in accordance with his statutory duties. Any relevant information arising will be made available to DfT as appropriate.

3.2 To the extent that the preferred Permanent Structure may have implications for the role of PPP Arbiter, his views will be solicited by the Steering Group.

3.3 During the Interim Period, the LUL Nominee will agree to provide such information as DfT might reasonably require, for example, any information relevant to DfT in relation to its position as a stakeholder and lender to TfL for the purposes of the Interim Funding Loan, and information regarding the operational performance of the LUL nominee.