

ANNEX A**REFERENCE APPLICATION NOTICE****REFERENCE TO THE ARBITRATOR
FOR
DIRECTIONS OR GUIDANCE****REFERENCE APPLICATION NOTICE**

Dated: 23 September 2009

We, London Underground Limited (the Referring Party)

Wish to apply to the Arbitrator for directions and guidance relating to:

- (a) A direction pursuant to paragraph 1.3(b)(i) of Schedule 1.9 as to the correctness or otherwise of Infraco's contention that new or varied obligations introduced by LUL as part of Restated Terms (modified as set out in the Statement of Case and Initial Submission) involve an increase in risk which is material in the context of Infraco's overall activities. If the Arbitrator considers that Infraco's contention is correct, LUL seeks guidance as to the specific changes which he considers necessary to Restated Terms to avoid this result.
- (b) A direction pursuant to paragraph 1.4(a) of Schedule 1.9 as to the correctness or otherwise of Infraco's contention that a Notional Infraco would be unable to finance on any basis the continued and future performance of Restated Terms (modified as set out in the Statement of Case and Initial Submission).
- (c) A direction pursuant to paragraph 1.5(a)(i) of Schedule 1.9 as to the amount and timing of the relevant cashflows, including:
 - (i) the amounts of any anticipated Base Finance and/or the amounts of any Eligible Finance required; and
 - (ii) the amounts (if any) included in the negative cashflows arising from the RP1 pension deficit.
- (d) The Arbitrator is requested to include in the direction provided under paragraph (c) a statement of:
 - (i) the performance and resultant revenues the Arbitrator considers would be



- earned by a Notional Infraco, broken down into Capability, Availability, Ambience, Specific Project Adjustments and Service Points (as set down under Performance "P" in the OPPPA DBS), and an explanation of how each of these has been taken into account in cashflows referred to at (c) above; and
- (ii) the Notional Infraco RP1 closing position.
- (e) In the first instance (pending the advice of the Financial Adviser of International Repute (FAIR) pursuant to paragraph 6.4 of Schedule 1.9), guidance, and following receipt of that advice, a direction, as to the ISC to be paid by LUL from the first Review Date on the basis described in paragraph 1.5(b) of Schedule 1.9. In giving the initial guidance, if the Arbitrator considers that Base Finance or Eligible Finance is required, he is requested to state an assumption as to the terms on which such finance could be raised (including as to the split between equity and debt) and give the requested guidance on this basis. If he considers that the Affordability Constraints for RP3 and RP4 are insufficient to allow all or part of the Base Finance or Eligible Finance to be raised, he is requested give the requested guidance on the basis that the Affordability Constraints for RP3 and RP4 are deemed modified to the extent necessary to avoid this result, and to state the amount of any such modifications.
- (f) Guidance and/or ancillary directions (in accordance with Section 229(3)(b) of the GLA Act) (as explained in the Statement of Case and Initial Submission) as follows:
- (i) guidance as to the allocation of Minor Closures and of L&E Closures which would be required by a Notional Infraco for RP2; and
 - (ii) a direction ancillary to the ISC direction requested at (e) above (following receipt of the advice of the FAIR) as to the amounts (if any) payable by LUL in respect of PLU 1 and 2 (PLU) and the Northern Line which have been taken into account in arriving at the determination of the ISC.
- (g) In the first instance (pending the direction requested at (e) above), guidance, and subsequently, a direction, pursuant to paragraphs 1.5(c) and 1.5(d) of Schedule 1.9 as to the fixed amounts and the applicable values of RPIX.

Note: State clearly and concisely what is being sought.



We are applying for directions and guidance because:

Although the parties have made progress in resolving various matters since June 2009 when Tube Lines made its Response and propose continuing engagement where necessary or desirable, LUL is mindful of the timetable constraints and considers that the parties may be unable to resolve remaining issues without direction and guidance from the Arbitrator.

any question on which you seek a decision by the Arbitrator. Include the material facts on which you rely identifying any relevant PPP Agreements or statutory provision(s) applicable.

Attached to this Reference is: *(tick appropriate boxes)*

- (i) Statement of Case
- (ii) Initial Submission
- (iii) Detailed Submission

Note: *In the event that the Initial Submission is not attached to this Reference please detail the exceptional circumstances and state the date agreed by the Arbitrator for its subsequent provision.*

Where there is one Referring Party:

In accordance with Article 4.3, I confirm that a copy of this Reference and any documents and information comprised or referred to in it has been provided to:

Andrew Cleaves
Commercial Director
Tube Lines Limited
15 Westferry Circus
Canary Wharf
London
E14 4HD

Telephone: 020 7088 4940



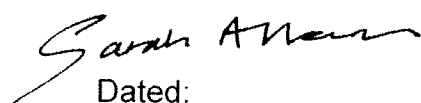
Telephone: 020 7088 4940
 Email: andrew.cleaves@tubelines.com

Note: Insert name and contact details of the person to whom the Reference has been sent.

²I confirm that to the best of my knowledge and belief that the contents of this Reference and any documents and information comprised or referred to in it are true and accurate

Signed Dated: 23/09/09

Authorised Signatory: Sarah Atkins
 Director



³Signed Dated:

Authorised Signatory
 Director/Secretary

Address to which communications about this Reference should be sent:

Sarah Atkins
 Director of Reviews and Legal
 London Underground Limited
 55 Broadway
 London
 SW1H 0BD

Telephone: 020 7918 3433
 Email: sarah.atkins@tube.tfl.gov.uk

You should provide this information for the Arbitrator:

1. Identity of any Responding Party, Third Party or PPP Stakeholders likely to be involved in the conduct of the Reference.

² If applicable include additional confirmation relevant to statements or projections for future years as follows: "This Reference also includes statements and/or projections for future years which are given in good faith, following appropriate enquiries and on the basis of stated assumptions set out therein which assumptions are reasonably held by me/us as at the date hereof. Where those assumptions differ from those contained in the most recent AAMP and the business plans relied upon by shareholders and lenders this is made clear within the Reference or any documents and information comprised or referred to in it."

³ Where another Referring Party joins in the reference it shall be at liberty to agree, disagree or express no view on all or any aspects of the Reference (see paragraph 6.5 of Schedule 1.9 to the Metronet PPP Agreements).



2. Has the subject of this Reference or any ancillary matter or matter material to the Reference been (or is currently being) considered elsewhere in another forum and if so where?

Yes. A list of matters referred to dispute resolution under the DRA will be provided to the Arbitrator and Tube Lines. In addition there exist other claims between the Reference Parties – not yet in dispute resolution – including claims in relation to Stations and the Jubilee Line Upgrade.

3. Is it intended that this Reference or any such ancillary or related matter be considered in another forum in the future?

To the extent not superseded by agreement, the contentions made by Tube Lines in its Response pursuant to paragraph 2.2 of Schedule 1.9, may be referred to dispute resolution in accordance with paragraph 4 of Schedule 1.9.

4. By what date is the Arbitrator's decision requested?

Draft directions/guidance are requested by December 2009 (save where direction is requested to be provided following guidance).

