

MEMORANDUM OF UNDERSTANDING

among

THE CITY OF EDINBURGH COUNCIL, the local authority for the City of Edinburgh in terms of the Local Government etc. (Scotland) Act 1994, having its principal office at Council Headquarters, Waverley Court, East Market Street, Edinburgh, EH8 8BG, or its statutory successors (“**the Council**”)

and

TIE LIMITED, a company incorporated under the Companies Acts (registered number SC230949) and having its Registered Office at City Chambers, High Street, Edinburgh, EH1 1YJ (“**tie**”)

and

TRANSPORT EDINBURGH LIMITED, a company incorporated under the Companies Acts (registered number SC269639) and having its Registered Office at 55 Annandale Street, Edinburgh EH7 4AZ (“**TEL**”)

(together “**the Parties**”)

Whereas:-

1. The Council entered into separate operating agreements with both tie and TEL in May 2008 in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network in terms of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006; and
2. The Parties now wish to enter into this agreement to further regulate the relationship between the Parties, specifically with regard to ownership structures and modified governance arrangements.

**NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY
AGREE AS FOLLOWS:**

- 1.1 This Agreement should be read in conjunction with the TEL and tie Operating Agreements and defined terms should be construed accordingly.
- 1.2 The existing agreement between TEL and the Council is terminated with immediate effect and a revised Operating Agreement will take its place.
- 1.3 The Parties acknowledge that the TEL Operating Agreement now includes obligations with regard to the delivery of the Gogar Intermodal Station project. Therefore, with reference to the definition of "Funding Agreement" in the tie Operating Agreement dated May 2008, the Parties agree that such definition shall be deemed to include the terms of the Gogar Funding Agreement to facilitate the delivery of the proposed Gogar Intermodal Station project. The Parties further agree to work together to ensure that TEL (through tie) manage and deliver the Gogar Intermodal Station project. The Parties acknowledge that further arrangements will need to be formally agreed between TEL and the Council in due course as the Gogar Intermodal Station project progresses beyond the design stage.
- 1.4 With reference to clause 2.20 of the tie Operating Agreement dated May 2008, it is acknowledged by the Parties that although day-to-day management of the tram project will remain with tie, all strategic and other material decisions will be made by TEL and direction will be given to tie on such matters through the Tram Project Board. In this regard the companies shall comply with the governance diagram at Schedule 1 and the governance diagram in the tie Operating Agreement dated May 2008 shall be redundant.
- 1.5 With reference to clause 2.24 of the tie Operating Agreement dated May 2008, it is acknowledged by the Parties that the settlement of any and all claims and payments will now be within the control of TEL and the Tram Project Board as per the terms of the revised Operating Agreement between TEL and the Council, including the terms of authority delegated by the Council to TEL set out therein.
- 1.6 With reference to clause 2.25 of the tie Operating Agreement dated May 2008, it is acknowledged by the Parties that the existing clause shall be redundant and the following provisions shall apply. tie shall no longer require to operate a Remuneration Committee of the tie Board and all relevant tie remuneration matters will be monitored and controlled by the Remuneration Committee of the TEL Board in accordance with the terms of the TEL Operating Agreement.
- 1.7 The remuneration packages of the Chairman and Chief Executive of tie respectively will be determined in accordance with the terms set out in the TEL Operating Agreement.
- 1.8 With reference to clause 2.26 of the tie Operating Agreement dated May 2008, tie will not be required to submit an annual business plan. TEL agrees to include this within its business plan.
- 1.9 In order to avoid duplication, the Parties agree that, with regard to the obligations incumbent upon tie in terms of the tie Operating Agreements, where TEL have already performed an obligation on tie's behalf, tie need not perform such obligation again. Similarly, an obligation incumbent upon TEL shall be deemed to be fulfilled if a subsidiary of TEL meets that obligation.

- 1.10 The Parties agree that tie has no delegated authority to approve changes to the contractual arrangements, scope, programme, cost or any other substantive aspect of the Project except to the extent that TEL or the Tram Project Board expressly provides such delegated authority to the tie Chief Executive, the designated Tram Project Director or other approved tie director or officer.
- 1.11 The Parties agree that the Tram Monitoring Officer will not formally be a member of the Tram Project Board or a director of TEL and Clause 3.5 of the tie Operating Agreement dated May 2008 will be construed accordingly. However, the Council will use all reasonable endeavours to procure that the Tram Monitoring Officer will, ex officio, attend all meetings of the TEL Board and the Tram Project Board.
- 1.12 The terms of the tie Operating Agreement entered into in 2005 will continue to operate in full insofar as not superseded by the terms of the tie Operating Agreement entered into in May 2008 or by the terms of this Agreement.
- 1.13 The tie Board will retain all statutory responsibilities relevant to tie under the Companies Acts and other relevant legislation and regulatory requirements.
- 1.14 It is acknowledged by the Council and TEL that the obligations placed on tie under the tie Operating Agreements entered into in May 2005 and May 2008 are to be interpreted as being limited by the restrictions placed on tie under this Agreement.
- 1.15 The Parties acknowledge that they will fully comply with, and will assist each other in complying with, the terms of the Freedom of Information (Scotland) Act 2002 (“FOISA”). Insofar as compliant with FOISA, the Parties agree to keep confidential all appropriate matters relating to the business and operations of tie and TEL.

1.16 This Agreement is governed by the Laws of Scotland and the Parties submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding three pages and the attached Schedule are executed as follows:

Subscribed for and on behalf of The City of Edinburgh Council at *Edinburgh* on *18* day of *December* 2009

Witness.. [redacted]

Full Name... *Mark Smith*

Proper Officer

Address... *CITY CHAMBERS,*
MARK ST, EDINBURGH

Subscribed for and on behalf of [redacted] Limited at *Edinburgh* on *18* day of *December* 2009

Director.. [redacted]

Director/Secretary... [redacted]

Subscribed for and on behalf of TEL Limited at *Edinburgh* on *18* day of *December* 2009

Direc [redacted]

Director/Secretary..... [redacted]

Schedule 1
Governance Diagram

Governance Structure

