



PIPER RUDNICK
GRAYCARY

EXECUTION

(1) tie LIMITED

- and -

(2) THE CITY OF EDINBURGH COUNCIL

- and -

(3) SCOTTISH WATER

AGREEMENT

relating to
works concerning Scottish Water equipment
and apparatus and the removal of objections
in respect of Edinburgh Tram (Line One) Bill
and Edinburgh Tram (Line Two) Bill

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CONTENTS

1.	DEFINITIONS AND INTERPRETATION	2
2.	GENERAL OBLIGATIONS	6
3.	CO-ORDINATED PROGRAMME OF WORKS	8
4.	DEVELOPMENT OF SCOPE OF ADVANCE DIVERSION WORKS	9
5.	MANAGEMENT OF THE ADVANCE DIVERSION WORKS.....	11
6.	COSTS, EXPENSES AND FINANCIAL CONTRIBUTIONS	13
7.	WITHDRAWAL OF OBJECTION.....	15
8.	LIABILITY	15
9.	TRANSFER OF POWERS.....	17
10.	DISPUTE RESOLUTION PROCEDURE	17
11.	ASSIGNATION.....	22
12.	CONFIDENTIALITY.....	22
13.	NOTICES AND APPROVALS.....	23
14.	MISCELLANEOUS	23
15.	GOVERNING LAW AND JURISDICTION	24
	SCHEDULE.....	27
	Part 1.....	27
	Adjudication	27
	Part 2.....	37
	Panels For Adjudication	37
	Part 3.....	39
	Notices.....	39
	Part 4.....	41
	Tram Project Affected Area	41
	Part 5.....	42
	Working Party.....	42
	Part 6.....	43

Major Works..... 43

AGREEMENT

BETWEEN

- (1) **tie LIMITED** (Company number SC230949), a wholly owned subsidiary of CEC, whose registered office is situated at City Chambers, High Street, Edinburgh EH1 1YJ ("**tie**") and its successors or assigns;
- (2) **THE CITY OF EDINBURGH COUNCIL**, the Local Authority for the said City constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its principal offices at City Chambers, High Street, Edinburgh EH1 1YJ ("**CEC**") and its successors or assigns; and
- (3) **SCOTTISH WATER**, established under the Water Industry (Scotland) Act 2002 and having its principal office at Castle House, 6 Castle Drive, Dunfermline, Fife, KY11 8GG ("**SW**") and its successors or assigns;

WHEREAS:

- (A) CEC is currently promoting two private bills introduced to the Scottish Parliament on 29 January 2004, Edinburgh Tram (Line One) Bill and Edinburgh Tram (Line Two) Bill (the "**Bills**"). Both Bills have achieved approval in principle. The tram lines form the proposed Edinburgh Tram Network.
- (B) **tie** has been appointed by CEC to act as agent for CEC in respect of the application for legal powers and the procurement of the funding, construction, commissioning, operation and maintenance of the Edinburgh Tram Network.
- (C) SW has lodged detailed objections in respect of the Bills as a result of its concern that the Bills do not provide adequate protective measures in relation to (i) the safety and operation of the equipment and apparatus for which SW is responsible and (ii) its statutory rights and obligations.
- (D) The parties recognise that their respective objectives are served efficiently by a co-ordinated approach to programming and implementation of the Advance Diversion Works and SW Works.
- (E) The parties have agreed that SW shall withdraw its objections to the Bills on the basis that the parties acknowledge and accept as binding on each other and their successors or assigns (statutory or otherwise) the following terms and conditions:

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms shall have the following meanings, unless the context requires otherwise:

1.1.1 "**Acts**" means the Bills as passed with Royal Assent as Acts of the Scottish Parliament;

1.1.2 "**Adjudication Procedure**" means that part of the Dispute Resolution Procedure set out in part 1 of the Schedule;

1.1.3 "**Advance Diversion Works**" means (i) all Authorised Works relating to the Apparatus and, in particular the 'diversionary work' as defined in, and for the purposes of, the 2003 Regulations (ii) the scope of which shall be defined in accordance with the provisions of clause 4 of this Agreement, or (iii) are agreed pursuant to clauses 2.8 and 5.6;

1.1.4 "**Agreement**" means this agreement and its Schedule;

1.1.5 "**Apparatus**" means any equipment, apparatus or other devices belonging to or maintained by SW above or below ground and includes any structure for the lodging within that structure of equipment or apparatus or any structure required to maintain or afford access;

1.1.6 "**Approval Bodies**" means any authority or body concerned with the provision of consents, approvals, permits, licences or other enabling action in connection with the Edinburgh Tram Network ;

1.1.7 "**Authorised Undertaker**" shall mean CEC, ~~the~~ acting on behalf of CEC, or any party to whom the powers of the authorised undertaker under the Acts is duly transferred;

1.1.8 "**Authorised Works**" means the works to be authorised by the Bills;

1.1.9 "**Code**" means the Code of Practice entitled "Measures Necessary where Apparatus is affected by Major Works (Diversionary works)" dated June 1992, as revised and re-issued from time to time;

- 1.1.10 "**Confidential Information**" means all documents, materials and other information or data (whether technical or commercial) of a confidential nature relating to the subject matter of this Agreement;
- 1.1.11 "**DKE**" means the developed kinematic envelope which is the maximum width under any circumstances of a tram in motion at a particular point on the Edinburgh Tram Network;
- 1.1.12 "**Dispute**" means a dispute or difference arising between the parties under this Agreement;
- 1.1.13 "**Dispute Resolution Procedure**" means the procedure set out in clause 10 and part 1 of the Schedule of this Agreement;
- 1.1.14 "**Edinburgh Tram Line 1**" means a loop through north Edinburgh city centre with Leith, Newhaven, Granton, Roseburn and Haymarket and passing through the Waterfront Development Area, as such route may be further developed and/or amended;
- 1.1.15 "**Edinburgh Tram Line 2**" means a western line from Edinburgh city centre to Edinburgh Park, the Gyle, Gogarburn and Edinburgh Airport/Newbridge, with possible extensions to Livingston and South Queensferry, as such route may be further developed and/or amended;
- 1.1.16 "**Edinburgh Tram Network**" means Edinburgh Tram Line 1 and Edinburgh Tram Line 2 or either of them, as may be amended from time to time, together with any modification, line extension, spur, interconnection and any additional line which may be developed and implemented by ~~the~~ on instruction from CEC;
- 1.1.17 "**Framework Agreement**" means the agreement referred to in clause 5.1 of this Agreement;
- 1.1.18 "**Framework Contractor**" means the utilities diversion contractor to be appointed by ~~the~~ to carry out the Advance Diversion Works;
- 1.1.19 "**Indirect Losses**" means any damage, cost, third party claim, expense or loss incurred by a party to this Agreement as a consequence of a breach of this Agreement or a negligent act or omission which relates to loss of profits

or revenue, loss of use, loss of production or output, interruption or loss of business or business opportunity or other consequential or indirect loss;

- 1.1.20 "**Initial Condition Survey**" means a survey carried out in pursuance of clause 4.4 of this Agreement;
- 1.1.21 "**Limits of Deviation**" means the limits described in the plans lodged with the Bills submitted by **tie** to the Scottish Parliament;
- 1.1.22 "**New Condition Survey**" means a survey carried out under clause 5.8 of this Agreement;
- 1.1.23 "**Q & S II Period**" means the period from April 2002 to end March 2006;
- 1.1.24 "**Q & S III Period**" means the period from April 2006 to end March 2014;
- 1.1.25 "**Related Contracts**" means in respect of Edinburgh Tram Line 1 and Edinburgh Tram Line 2 or either of them, the agreements entered into or to be entered into by **tie** in respect of *inter alia* the funding, financing, design, construction, operation and maintenance thereof;
- 1.1.26 "**Relevant Authority**" means any public body or organisation with responsibilities or involvement with regard to the Edinburgh Tram Network.
- 1.1.27 "**Schedule**" means the relevant schedule in six parts subscribed and attached as relative to this Agreement;
- 1.1.28 "**SW Works**" means replacement, refurbishment, upgrading, repair or monitoring works relevant to the Advance Diversion Works which have been determined pursuant to SWs Quality & Standard II and Quality & Standard III programme as matched to statutory requirements (or as otherwise needed for legal compliance) and scheduled to take place in relation to Apparatus located on, under, across or over land within the Limits of Deviation within a period of no less than nine years from the date of this Agreement;
- 1.1.29 "**tie Programme**" means the master programme developed by **tie** and provided to SW within 45 days following provision by SW of the information required pursuant to clause 4;

- 1.1.30 **"Tram Project Affected Area"** means the anticipated limits of the Edinburgh Tram Network as set out in the drawings in part 4 of the Schedule;
- 1.1.31 **"Tram Supplier"** means the tram supplier to be procured by **tie** in relation to the supply of trams for the Edinburgh Tram Network;
- 1.1.32 **"Utilities Diversion Strategy"** means the methodology, resources, procurement and contracts applied by **tie** to optimise the construction productivity during the execution of the Authorised Works and to minimise disruption while safeguarding the interests of SW and other statutory undertakers and utilities named in part 5 of the Schedule in an agreed manner which does not compromise design, procurement and delivery of the Edinburgh Tram Network to budget and programme;
- 1.1.33 **"the 1991 Act"** means the New Roads and Street Works Act 1991 or any statutory revision or re-enactment thereof and any regulations made thereunder; and
- 1.1.34 **"the 2003 Regulations"** means the Road Works (Sharing of Costs of Works) (Scotland) Regulations 2003.
- 1.2 The provisions of the 1991 Act shall apply to the parties and to the subject matter of this Agreement (unless the context implies otherwise), including as to the conferred powers of the 1991 Act for Tramways in the Authorised Undertaker.
- 1.3 In the event of any ambiguity between and with regard to the terms of the Bills (or the Acts, as the case may be) and the terms of this Agreement, the terms of this Agreement shall apply.
- 1.4 The singular includes the plural and vice versa and any one gender includes the others.
- 1.5 Headings are for reference only and shall not affect or be used in the interpretation of this Agreement.
- 1.6 Reference to a statute, bye-law, regulation, standard or order is to that statute, bye-law, regulation, standard or order as amended, modified or replaced from time to time

and to any bye-law, regulation, rule, standard, delegated legislation or order made thereunder.

- 1.7 References to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies, incorporated or unincorporated, whether having separate legal personality or not.
- 1.8 References to the date of this Agreement shall mean the last date of execution of this Agreement.

2. GENERAL OBLIGATIONS

- 2.1 The Authorised Undertaker shall use such skill and care as is expected of a competent developer to co-ordinate the overall planning and supervision and execution of the Authorised Works in accordance with the terms of this Agreement and throughout the progress of the Authorised Works shall ensure that SW is fully informed of all material matters concerning the Advance Diversion Works.
- 2.2 Without prejudice to the provisions of clause 10, the Authorised Undertaker shall use all reasonable endeavours to co-operate with SW to resolve all issues arising between them resulting from the programming, construction and maintenance of the Advance Diversion Works.
- 2.3 In all cases relating to this Agreement, **tie**, CEC and SW agree to act reasonably and (without prejudice to that generality) where reference is made in this Agreement to the satisfaction of any party, such satisfaction shall be reasonable satisfaction and where any party is required under this Agreement to give its consent or approval to any matter or thing, such consent or approval shall be given as a notice in writing not to be unreasonably withheld or delayed.
- 2.4 Except in the event of an emergency, SW shall obtain the prior consent of **tie** before carrying out any physical changes to any land within the Limits of Deviation which may have a material effect on the ability of the Authorised Undertaker to carry out or procure the carrying out of the Authorised Works.
- 2.5 The parties undertake to each other that they will not use any means or take any action, or procure any other person to do so, that would have the effect of nullifying,

undermining or rendering less effective or ineffective any provision of, or the underlying purpose of, this Agreement.

2.6 In respect of the ability of the parties to enter into this Agreement, each party warrants that it has full authority under its constitution or memorandum and articles of association (as the case may be), it has obtained or does not require the consent, authority or licence of any third party and that by entering into this Agreement it will not be or become in breach of any other agreement, arrangement or legal obligation of any nature.

2.7 **tie** and CEC agree that for design, technical specification and construction methodology purposes, the design life of Apparatus installed as Advance Diversion Works or as SW Works, in particular sewer pipes with a nominal bore of twelve inches and over shall be set in accordance with SW design practice current at the commencement of the design process.

2.8 With regard to stray current which is reasonably assessed as emanating from the Edinburgh Tram Network:

2.8.1 the Authorised Undertaker agrees that adequate stray current protective measures shall be provided for relevant Apparatus including as a priority cathodic protective measures giving due cognisance to the existing levels of stray current at the time of the design and immediately preceding the commissioning phase of the Edinburgh Tram Network. For the avoidance of doubt, "adequate" for these purposes shall be interpreted to include meaning that no measures may be provided;

2.8.2 in the event that SW considers on reasonable grounds presented to **tie** that the Authorised Undertaker has installed inadequate stray current protective measures SW may require that a stray current survey (with a scope agreed by the parties) be carried out by an independent third party, to be selected and agreed by **tie** and SW (the "**Independent Surveyor**"), to establish conclusively the position;

2.8.3 if the stray current survey referred to in clause 2.8.2 above demonstrates conclusively that any damage caused to Apparatus has arisen as a result of inadequate stray current protective measures, then, to the extent that the survey referred to conclusively establishes that the Authorised Undertaker is

responsible for a proportion of the damage (the "**Relevant Damage**"), the Authorised Undertaker shall:

2.8.3.1 pay any such proportion of the cost making good the Relevant Damage; and

2.8.3.2 pay any proportion as may be determined by the Independent Surveyor of the cost for the provision of such adequate stray current protective measures as may be determined in the relevant stray current survey referred to.

2.9 In relation to the proposals submitted to SW pursuant to clause 5.6, the parties shall consult with a view to the inclusion of agreed matters within the scope of the Advance Diversion Works.

2.10 The parties shall act in good faith in the exercise of their obligations under this Agreement.

2.11 **tie** and SW shall designate a suitably qualified representative who shall meet on a monthly basis with his counterpart (or at such other interval as agreed) to review the performance of this Agreement.

2.12 The parties shall use reasonable endeavours to agree a mechanism for dealing with any situation where SW is required to carry out any emergency works in pursuance of any statutory or regulatory obligations, and that in the interests of health and safety.

2.13 The parties hereby commit to complying with relevant health and safety regulations and standards. In the event of a health and safety issue arising the parties shall consult with each other with a view to achieving a mutually acceptable solution.

3. CO-ORDINATED PROGRAMME OF WORKS

3.1 The parties acknowledge and agree that the minimum disruption to the public, minimum diversionary works with minimum out-turn costs are important mutual objectives in relation to the execution of the Advance Diversion Works and the SW Works. To that end:

3.1.1 SW shall provide **tie** with:

3.1.1.1 with regard to SW Works to be carried out during the Q & S II Period, a current programme of such SW Works determined pursuant to Quality & Standard II and that within 60 days of the last date of execution of this Agreement;

3.1.1.2 with regard to SW Works to be carried out during the Q & S III Period, a programme of such works determined pursuant to Quality & Standard III and that as soon as reasonably practicable after the release of Quality and Standards III by the Water Industry Commissioner for Scotland or his statutory successor;

taking into account that **tie** wishes to ensure execution and completion of the SW Works within eighteen months of the date of Royal Assent for the first Bill to be enacted by the Scottish Parliament and SW undertakes so far as reasonably practicable to execute the SW Works within the timeframe referred to;

3.1.2 SW shall use best endeavours to facilitate the implementation of the SW Works, including early or adjusted commencement and implementation so as to complement the Utilities Diversion Strategy and the **tie** Programme.

3.1.3 For the avoidance of doubt, unless expressly agreed by the parties, the SW Works shall not form part of the Advance Diversion Works.

4. DEVELOPMENT OF SCOPE OF ADVANCE DIVERSION WORKS

In pursuance of section 143(1) of the 1991 Act, SW shall work in collaboration with and assist **tie** in the development of the Utilities Diversion Strategy and in particular enable the timely production of the scope, technical specification and overall programme for the Advance Diversion Works based on existing C3 proposals upgraded to equivalent of level C4 certainty (but excluding level C4 budget estimates). Without prejudice to that generality, on request and reasonable notice by **tie**, SW shall:

4.1 provide all relevant contemporary data including contemporary condition surveys relating to the presence and location of all buried and above ground Apparatus within the Limits of Deviation and particularly focusing upon the DKE plus two metres on either side thereof;

- 4.2 provide plans showing locations and depths of all buried and above ground Apparatus within the Tram Project Affected Area;
- 4.3 confirm that the Advance Diversion Works do not adversely affect its assets or operations having satisfied itself in relation to the following:
 - 4.3.1 the extent, design, scope and programme of the Authorised Works;
 - 4.3.2 the proposed position of any alternative Apparatus to be provided or constructed with a view to ensuring that SW will be afforded the necessary facilities for the maintenance and renewal of that alternative Apparatus;
 - 4.3.3 SW's requirement to be able to maintain, repair or replace as necessary the Apparatus post construction of the Edinburgh Tram Network without adversely affecting or interrupting the operation and maintenance of the Edinburgh Tram Network;
 - 4.3.4 that neither the Advance Diversion Works nor any SW Works will result in SW being in breach of its obligations as a statutory undertaker as defined in the 1991 Act or any other statutory, regulatory, contractual or other obligation;
- 4.4 facilitate the carrying out by tie, at tie's option, of a survey of the condition of all Apparatus in, upon, under, below or across the DKE plus two metres on either side, thereof, such survey to be carried out at tie's cost ("**Initial Condition Survey**") the parties accepting that tie shall act reasonably in determining that an Initial Condition Survey is not required;
- 4.5 work closely with tie in relation to implementation of the Utilities Diversion Strategy in accordance with tie's Programme in order to minimise diversion requirements and out-turn costs and, in particular to identify and recommend appropriate adjustment to any programme of works by SW likely to compromise or adversely affect the programme for the stopping up or diversion of any streets or roads for the purposes of the Authorised Works; and
- 4.6 attend and participate in meetings as may be reasonably required by tie, including but not limited to meetings (i) for the procurement selection of the Framework Contractor; (ii) concerning any working party established by the parties named in part

5 of the Schedule for the purpose of input to the Utilities Diversion Strategy; and (iii) during execution of the Authorised Works.

5. MANAGEMENT OF THE ADVANCE DIVERSION WORKS

- 5.1 On receipt of the technical specification and scope of the Advance Diversion Works and the upgraded C3 proposals referred to in clause 4 above, **tie** shall instigate a public procurement to invite third parties to tender competitively for the appointment as Framework Contractor to carry out the Advance Diversion Works under a multi-utility Framework Agreement and SW hereby agrees to **tie** managing this process and letting the relevant contract.
- 5.2 **tie** and CEC shall afford SW proper opportunity, through agreed involvement in the competitive procurement selection of the Framework Contractor, to satisfy itself that the Framework Contractor is suitably qualified and experienced and possesses the necessary skill and expertise to execute the proposed scope of works.
- 5.3 In the event that certain of the Advance Diversion Works may only be carried out by SW by virtue of a statutory or other regulatory obligation, SW hereby agrees:
- 5.3.1 to being appointed by the Framework Contractor to execute such works or to instruct **tie** to procure the appointment of a suitable party to execute such works on behalf of SW, in either case subject to such reasonable and usual industry specific terms and conditions and within such timescales as may be stipulated by **tie** and the Framework Contractor.
- 5.3.2 that the cost of carrying out the works referred to in clause 5.3.1 above shall be stipulated in the upgraded C3 proposals to be provided by SW under clause 4.
- 5.4 SW shall be entitled to inspect at any time the carrying out of the Advance Diversion Works with the prior consent of **tie** and upon reasonable notice (at least one business day) to the Framework Contractor, such inspection to be co-ordinated with **tie**, the parties accepting that SW shall not be required to provide notice of such inspection in the event of an emergency.
- 5.5 The Authorised Undertaker shall provide SW with not less than 28 days' notice in writing of its intention to stop up any street under section 7 of each of the Bills respectively (and the equivalent sections of the Acts, whatever the specific number of

the relevant sections) in any case where any Apparatus is under, in, upon, over, along or across that street.

5.6 **tie** shall consider for inclusion in the Advance Diversion Works detailed specifications for multi-utility under track crossings at suitable intervals (no less than 800m) at positions which **tie** considers would safeguard the Edinburgh Tram Network, against the need for SW, within a period of nine years from the date of this Agreement to initiate works likely to naturally disrupt the Authorised Works of the Edinburgh Tram Network.

5.7 Any variation to the scope of the Advance Diversion Works proposed by SW or occasioned by the SW Works and which are not identified specifically by SW prior to the appointment of the Framework Contractor shall be dealt with in accordance with the change control mechanism in the Framework Contractor's agreement with **tie** and CEC and SW shall be responsible for the payment of any resultant costs howsoever apportioned in accordance with this Agreement.

5.8 In the event that SW considers on reasonable grounds presented to **tie** that the Framework Contractor has compromised or damaged any Apparatus or that damage has been caused by a third party during the Advance Diversion Works SW shall be entitled to require a condition survey ("**New Condition Survey**") to establish the position. If such New Condition Survey shows that there is no material change to the condition of the Apparatus from the Initial Condition Survey or that there is damage and that such damage is proven to be unlikely to have been caused during the Advance Diversion Works, the cost of the survey and all reinstatement works and additional cost caused by any delay to the Advance Diversion Works shall be to the account of SW. If the New Condition Survey shows that the damage

5.8.1 arose during the Advance Diversion Works; and

5.8.2 the type and extent of the damage is not different from that in respect of which SW would ordinarily expect to be indemnified under any contract entered into by it with a contractor to carry out diversionary works of a kind similar to those resulting in the damage,

the cost of the survey, making good the damage and all other proportional additional cost shall be borne by the Authorised Undertaker or the Framework Contractor (as the case may be).

5.9 The parties agree that in the event that during the Advance Diversion Works the Framework Contractor uncovers equipment belonging to a statutory undertaker or other person which has not been previously referenced pursuant to clause 4, SW shall

5.9.1 assist the Framework Contractor in identifying the owner of such equipment;

5.9.2 attend the relevant site as required by the Framework Contractor; and

5.9.3 facilitate

5.9.3.1 obtaining any relevant approvals as may be necessarily required by the Framework Contractor; and

5.9.3.2 the production of any information reasonably required for a variation of the Advance Diversion Works

and that with a view to enabling the Framework Contractor to perform the Framework Contract to programme, SW accepting that it shall approach and perform its obligations under this clause 5.9 as if the uncovering of the equipment referred to above by the Framework Contractor is "emergency works" as defined in the 1991 Act.

6. COSTS, EXPENSES AND FINANCIAL CONTRIBUTIONS

6.1 The parties agree that, without limitation, the categories of Authorised Works listed in part 6 of the Schedule shall be 'major works' for the purposes of the 1991 Act and the 2003 Regulations.

6.2 In the event that any of the Authorised Works resulting in the Advance Diversion Works are not "major works" for the purposes of the 2003 Regulations, whether by agreement of the parties or otherwise:-

6.2.1 if Apparatus

6.2.1.1 of better type, of greater capacity or of greater dimensions is placed in substitution for existing Apparatus of worse type, of smaller capacity or of small dimensions except where this has been solely due to using the nearest currently available type; or

6.2.1.2 (whether existing Apparatus or Apparatus substituted for existing Apparatus) is placed at a depth greater than the depth at which the existing Apparatus was situated,

then if the placing of such Apparatus involves cost in the relocation of the Apparatus exceeding that which would have been involved if the Apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, SW shall pay to the Authorised Undertaker a sum equal to such excess cost, the parties agreeing to establish a mechanism for determining such excess costs; or

6.2.2 if the Advance Diversion Works include the installation of new Apparatus provided in substitution for Apparatus already in place for more than 1/20th of its stated design life prior to such installation so as to confer on SW any financial benefit by deferment of the time for renewal or refurbishment of the Apparatus in the ordinary course, SW shall pay to the Authorised Undertaker a sum representing that benefit as calculated in accordance with the Code.

6.3 The Authorised Undertaker shall pay to SW:

6.3.1 in connection with Advance Diversion Works relating to Apparatus situated in roads those costs, charges and expenses reasonably incurred by SW (including appropriate demonstrable third party costs) in carrying out its obligations under clause 4 and clause 5 of this Agreement which are recoverable by SW in pursuance of the 1991 Act and under clause 4 and clause 5

6.3.2 in connection with Advance Diversion Works relating to Apparatus which are not situated in a road, all reasonable expenses incurred by SW as a result of carrying out its obligations under clause 4 and clause 5 of this Agreement, such amount calculated at rates as may be agreed between the parties using suitable industry and discipline benchmarks and provided that SW demonstrates in advance to the satisfaction of the Authorised Undertaker that such expenses do not relate in any way to Advance Diversion Works relating to Apparatus situated in roads ; and

6.3.3 with regard to the SW Works, either

6.3.3.1 such fixed cost as provided by SW (wherever possible) and agreed with **tie**, which represents any additional costs incurred by SW as a result of the performance of its obligations under clause 3 of this Agreement; or

6.3.3.2 where the fixed costs referred to in clause 6.3.3.1 above cannot be provided and the cost of the SW Works as a result of such works being carried out in pursuance of clause 3 ("the actual cost"), exceeds the cost of the SW Works had it not been for SW's obligations under clause 3 ("the budgeted cost"), such reasonable proportion of the difference between the actual cost and the budgeted cost, as the parties may agree, the parties acting reasonably in this respect.

6.4 The parties agree that **tie** shall make provision for effective financial control regarding requirement for the release of funds in order to secure entitlements to contributions under the provisions of the 2003 Regulations.

6.5 For the purposes of cost sharing under the 1991 Act and the 2003 Regulations and the scope of the Advance Diversion Works developed up to level C3 certainty shall be "the initial set of plans and estimates" for the purposes of the definition of "allowable costs" under the 2003 Regulations.

7. WITHDRAWAL OF OBJECTION

SW shall, as soon as reasonably practicable after the date of this Agreement or such other date as the parties agree, withdraw its objections unconditionally and irrevocably to the Bills by submitting a formal Letter or Letters of No Objection (signed by an appropriate corporate officer) in respect of the Bills to the Private Bills Unit of the Scottish Parliament, and contemporaneously forward a copy of such letter or letters to CEC and **tie**.

8. LIABILITY

8.1 Nothing in this Agreement shall impose any liability on CEC or **tie** with respect to any damage, cost, claim, expense or loss which is attributable to a breach of this Agreement by or the negligent act or omission of SW, or of any person in their employment, or of their contractors or agents, and any liability of CEC and/or **tie**

under this Agreement shall be reduced proportionately to the extent to which any damage, cost, claim, expense or loss is attributable to the breach, negligent act or omission of SW or of any person in their employment, or of their contractors or agents.

8.2 Nothing in this Agreement shall impose any liability on SW with respect to any damage, cost, expense or loss which is attributable to a breach of this Agreement by or the negligent act or omission of CEC and/or ~~tie~~, or of any person in their employment, or of their contractors or agents, and any liability of SW under this Agreement shall be reduced proportionately to the extent to which any damage, cost, claim, expense or loss is attributable to the breach, negligent act or omission of CEC and/or ~~tie~~ or of any person in their employment, or of their contractors or agents.

8.3 Notwithstanding clauses 8.1 and 8.2, no party shall have any liability to any other party in relation to Indirect Losses, save to the extent SW demonstrates that it has incurred liability under Scottish Water's Code of Practice for Customers, as such Code of Practice may be amended from time to time, for interruption or loss of service due to the breach of contract or the negligent act or omission of the Framework Contractor, in which event SW shall have recourse to the extent of the Framework Contractor's indemnity to ~~tie~~ and CEC which shall be on terms equivalent to standard in the industry.

8.4 For the avoidance of doubt the provisions of clause 8.3 shall not preclude SW from making any claims for losses incurred under any statute as a result of the carrying out of the Authorised Works, provided that with regard to such claims:

8.4.1 any losses are properly incurred and fully auditable;

8.4.2 SW co-operates fully with the Authorised Undertaker in relation to the handling and management of third party claims;

8.4.3 SW undertakes to minimise the extent of the claims; and

8.4.4 the type and extent of the loss incurred is not different from that in respect of which SW would ordinarily expect to be indemnified under any contract entered into by it with a contractor to carry out diversionary works of a kind similar to those resulting in the loss.

9. TRANSFER OF POWERS

- 9.1 If any of the powers of the Authorised Undertaker are transferred to another person or body (whether corporate or unincorporated) ("the transferee") under section 64 of each of the Bills (and the equivalent sections of the Acts, whatever the specific number of the relevant sections), **tie** and CEC shall procure a direct covenant from the transferee in favour of SW that the transferee shall observe and perform such of the obligations of and restrictions on the Authorised Undertaker under this Agreement as relate to the exercise of the powers which have been transferred.
- 9.2 Upon **tie** and CEC procuring the direct covenant referred to in clause 9.1 above, **tie** and CEC shall be released from any obligation under this Agreement to observe and perform the obligations and restrictions which relate to the exercise of the powers which have been transferred.

10. DISPUTE RESOLUTION PROCEDURE

- 10.1 The parties agree that this clause 10 shall have effect for the resolution of any Dispute.
- 10.2 Any Dispute shall, in the first instance, be referred to the Internal Resolution Procedure (the "**Internal Resolution Procedure**") in accordance with clause 10.10.
- 10.3 None of the parties shall commence any court proceedings until the Dispute Resolution Procedure has been completed, under exception that the Dispute Resolution Procedure shall not apply so as to prevent any of the parties seeking an interim order, or interim relief, in the Scottish courts.
- 10.4 In the event that any court proceedings whatsoever are initiated by any party against the other party or parties (as the case may be) to the Dispute, the parties agree that the Court of Session, Scotland, shall have exclusive jurisdiction.
- 10.5 The parties to the Dispute shall not be entitled to suspend the performance of any undisputed obligations under this Agreement merely by reason of the reference of any Dispute to the Dispute Resolution Procedure.
- 10.6 Subject to **tie's** discretionary rights set out in paragraph 41 to paragraph 43.3 of part 1 of the Schedule to require that a Dispute and a Related Dispute (as defined in paragraph 41 of part 1 of the Schedule) be dealt with together at an appropriate stage

of the Dispute Resolution Procedure, the provisions of this clause 10 are mandatory and binding upon the parties.

- 10.7 Unless a party refers a Dispute to the Dispute Resolution Procedure within three months of the date on which the event, matter or situation giving rise to the Dispute first occurred, such party shall be deemed to have irrevocably waived any right to refer such Dispute to the Dispute Resolution Procedure under exception that if such party was not aware, and could not with reasonable diligence have been aware, that such event, matter or situation had occurred, this clause 10.7 shall have effect as if for the reference herein to the date on which such event, matter or situation has occurred, there was substituted a reference to the date when such party first became or could with reasonable diligence have become aware that such event, matter or situation had occurred. This clause 10.7 is without prejudice to the rights of any other party to this Agreement to raise in defence to any Dispute any defence (including without prejudice to the preceding generality, any defence of retention, compensation or set-off) which would otherwise be available to it.
- 10.8 Except in relation to the matters provided for in paragraphs 1 to 40 of part 1 of the Schedule and subject to the provisions of clause 10.9, in the event that any party pursues any Dispute under the Dispute Resolution Procedure, and in the event that such party fails to observe any time limit or timescale provided for in the Dispute Resolution Procedure in relation to the pursuit or progression of such Dispute, such party shall, immediately upon such failure occurring, be deemed to irrevocably waived any right to pursue or progress such Dispute any further. In that event, such party shall be deemed to have elected not to have referred such Dispute or to have withdrawn such Dispute from the Dispute Resolution Procedure and shall be deemed to have irrevocably waived any right to refer any Dispute arising from the same or substantially the same Dispute or similar circumstances to the Dispute Resolution Procedure and shall be liable for payment of the whole fees incurred by any adjudicator who has acted in respect of such Dispute. This clause 10.8 is without prejudice to the rights of any party to this Agreement to raise in defence to any Dispute any defence (including, without prejudice to the preceding generality, any defence of retention, compensation or set-off) which would otherwise be available to it.
- 10.9 Notwithstanding the provisions of clause 10.8 above, in the event that a party who pursues any Dispute under the Dispute Resolution Procedure fails to observe any

time limit or timescale provided for in the Dispute Resolution Procedure in relation to the pursuit or progression of the Dispute, the other relevant party (or parties as the case may be) may elect to waive such failure, in which event the time limit or timescale to which such failure relates shall be extended at the discretion of such other party or parties to the Dispute and the Dispute shall progress in accordance with the Dispute Resolution Procedure, subject that all other time limits and timescales provided for in the Dispute Resolution Procedure which are affected by such extension shall be deemed to have been extended to give effect to such extension of the time limit or timescale to which such failure relates.

Internal Resolution Procedure

10.10 The following procedure is the Internal Resolution Procedure referred to in clause 10.2;

10.10.1 in the event of any Dispute arising, the representatives of the parties shall seek to resolve the Dispute at a meeting to be convened within three business days of written notification by one party to the Dispute to the other parties that it wishes to initiate the Internal Resolution Procedure in respect of that Dispute ("**Notification**"). Such Notification shall be given in accordance with the provisions of clause 13 of this Agreement;

10.10.2 further meetings may follow the meeting referred to in clause 10.10.1, but in any event, if the Dispute is not resolved within seven business days of Notification, each party shall, before the expiry of the period of 10 business days from Notification, serve, in accordance with the provisions of clause 13 of this Agreement, a written position paper ("**Position Paper**") upon the other parties. Each party's Position Paper shall state in reasonable detail that party's position and required objectives in relation to the Dispute, any required redress, and, where possible, any comment on the position of the other parties.

10.10.3 upon such service of the Position Paper by the party initiating or pursuing the Dispute, the Director of City Development of CEC, the Asset Management Director of SW and the chief executive of tie (or equivalent) (or their respective deputies in the event of their unavailability) shall seek to resolve

the Dispute by meeting in good faith to discuss and negotiate upon the Dispute without recourse to legal or other proceedings.

10.10.4 in the event that resolution of the Dispute is achieved by the Director of City Development of CEC, the Asset Management Director of SW and the chief executive of ~~the~~ (or equivalent), the resolution shall be reduced to writing and, once it is signed by the duly authorised representatives of the parties, shall be binding on such parties.

10.10.5 unless concluded by a written legally binding agreement, all discussions and negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the parties to the Dispute in any future legal or other proceedings, nor may such matters be produced or relied upon in evidence in any such proceedings.

10.11 In the event that any Dispute is not resolved by the Internal Resolution Procedure within a period of 30 business days from Notification (or longer if so agreed by the parties to the Dispute) then the following provisions of this clause 10.11 shall apply;

10.11.1 the Director of City Development of CEC, the Asset Management Director of SW and the chief executive of ~~the~~ (or equivalent) (or their respective deputies in the event of their unavailability) shall, within a further period of five business days, seek to agree that the Dispute shall be resolved by any one of the following procedures:

10.11.1.1 mediation in accordance with clauses 10.12 to 10.14; or

10.11.1.2 adjudication in accordance with the provisions of part 1 of the Schedule in which event the Referring Party must give its Notice of Adjudication to the parties within five business days of the date of expiry of the period of 35 business days from Notification (or longer if so agreed by the parties to the Dispute); or

10.11.1.3 litigation before the Court of Session, Scotland, in which event the Summons or Petition in any such litigation shall be signetted and served within 10 business days of the date of

expiry of the period of 35 business days from Notification (or longer if so agreed by the parties to the Dispute).

10.11.2 In the event that the Director of City Development of CEC, the Asset Management Director of SW and the chief executive of **tie** (or equivalent) (or their respective deputies in the event of their unavailability) are unable to agree that the Dispute be resolved by the procedures described in clauses 10.11.1.1 to 10.11.1.3, the party initiating or pursuing the Dispute shall refer the Dispute to mediation (and thereafter adjudication if necessary) in accordance with clause 10.12 to 10.14.

Mediation

10.12 The parties shall attempt in good faith to resolve the Dispute by a procedure of mediation in accordance with the Centre for Effective Dispute Resolution mediation rules or Model Mediation Procedure in force at the commencement of the mediation, (or in the event that the Centre for Effective Dispute Resolution has ceased to exist as at the time of the commencement of the mediation, mediation rules or a model mediation procedure offered by any other body offering commercial mediation services which shall be selected by **tie**, which procedures shall be commenced within five business days of the date of expiry of the period of 35 business days from Notification (or longer if so agreed by the parties). In the event that any such mediation rules or model mediation procedure conflicts with any provision of this clause 10, the provisions of this clause 10 shall take precedence. In the event that any timescales contained in such mediation rules or model mediation procedure conflicts with the timescales referred to in this clause 10, the timescales contained in such mediation rules or model mediation procedure shall be amended accordingly such that the timescales referred to in this clause 10 shall be adhered to.

10.13 In the event that resolution of the Dispute is achieved in consequence of such mediation procedure, such resolution shall be reduced in writing and, once it is signed by the duly authorised representatives of the parties, shall be binding on the parties. Unless concluded by a written legally binding agreement, all discussions and negotiations connected with the mediation procedure referred to in clause 10.12 shall be concluded in confidence and without prejudice to the rights of the parties and any future legal or other proceedings. Nor may such matters be produced or relied upon in evidence in any such proceedings.

10.14 If any Dispute to which this clause 10 relates is not resolved by the mediation procedure referred to in clause 10.12 and 10.13 within a period of 55 business days from Notification (or longer if so agreed by the parties to the Dispute), the mediation procedure shall be terminated and, unless the party initiating or pursuing the Dispute withdraws the Dispute, the Dispute shall within a further five business days, be referred to adjudication in accordance with part 1 of the Schedule.

11. ASSIGNATION

The parties to this Agreement shall not assign, novate or otherwise transfer the whole or any part of the Agreement without the prior written consent of the other parties, such consent not to be unreasonably withheld or delayed.

12. CONFIDENTIALITY

12.1 Each party agrees that, except as permitted by clause 12.2:

12.1.1 all Confidential Information shall be treated as strictly confidential and shall not be divulged in any way to any third party without the prior approval of the other parties; and

12.1.2 it shall procure that its respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

12.2 The parties shall be entitled to divulge any Confidential Information without the approval of the other parties in the following circumstances:

12.2.1 to any officer or servant of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary to enable the party in question to perform an obligation under this Agreement or to enforce its rights under this Agreement, upon obtaining an undertaking of strict confidentiality from such officer, servant or person;

12.2.2 to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

12.2.3 to any lender, security trustee, bank or other financial institution from whom such party is seeking or obtaining finance, or any advisers to any such entity,

upon obtaining an undertaking of strict confidentiality from the entity or advisers in question;

12.2.4 to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence;

12.2.5 pursuant to the order of any court or tribunal of competent jurisdiction;

12.2.6 to the Scottish Executive;

12.2.7 to the Scottish Ministers;

12.2.8 to the extent required by any legislation including the provisions of the Freedom Of Information (Scotland) Act 2002.

13. NOTICES AND APPROVALS

13.1 Any notice or approval to be given under this Agreement shall be in writing.

13.2 Any notice or approval shall be delivered by hand or by post to the relevant address set out in part 3 of the Schedule and shall be deemed to have been received:

13.2.1 if sent by hand, at the time of receipted delivery;

13.2.2 if sent by post, five working days after posting.

14. MISCELLANEOUS

14.1 If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected in any other jurisdiction.

14.2 Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent.

- 14.3 No waiver by any party of any default or defaults by the other parties to this Agreement in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.
- 14.4 No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by that party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 14.5 No amendment to this Agreement shall be effective unless in writing and signed on behalf of the parties.
- 14.6 Nothing in this Agreement shall confer on any third party a right to enforce any term of this Agreement by virtue of the doctrine of *jus quaesitum tertio*.
- 14.7 This Agreement contains all of the expressed terms of and constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. Each party to this Agreement acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.
- 14.8 The parties shall each be responsible for their own costs and expenses (including legal expenses) in connection with the withdrawal of objection pursuant to clause 7 negotiation and execution of this Agreement.

15. GOVERNING LAW AND JURISDICTION

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of Scotland.

15.2 Save as expressly provided otherwise, the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

IN WITNESS WHEREOF this and the preceding 24 pages and the Schedule attached as relative hereto are executed as follows:

For and on behalf of **tie LIMITED** at
Edinburgh on 23 June 2005 by:

[Redacted Signature]

Authorised Signatory

ANDREW WILLIAM JAMES HUNTER

Full Name (Please print in full)

[Redacted Signature]

Witness

PATRICK DIAMOND

Full Name (Please print in full)

[Redacted Address]

Address

DOLLARUE

G68

For and on behalf of **THE CITY OF
EDINBURGH COUNCIL** at Edinburgh on

3 August 2005 by:

[Redacted Signature]

Authorised Signatory

AILE KINDEAL

Full Name (Please print in full)

[Redacted Signature]

Witness

COLIN GEORGE MACDONALD

Full Name (Please print in full)

City Chambers

Address

High Street

Edinburgh EH1 1YJ

For and on behalf of SCOTTISH WATER at DUNFERMLINE
on 20 June 2015

2005 by:

X [Redacted] Director/Authorised Signatory X [Redacted] Director/Witness

X G. AITKENHEAD Full Name (Please print in full) X THOMAS JAMES BERKINS AITKEN Full Name (Please print in full)

X CASTLE HOUSE CARREBORO CAMPUS Address (Witness only)

DUNFERMLINE KY11 8LG

This is the Schedule referred to in the preceding Agreement between the Limited, The City of Edinburgh Council and Scottish Water.

SCHEDULE

Part 1

Adjudication

1. In the event that a party refers a Dispute to adjudication in terms of clause 10.11.1 or 10.14 of this Agreement or exercises a statutory right available to it (if any) under the Housing Grants, Construction & Regeneration Act 1996, to raise adjudication proceedings, such adjudication shall be conducted in accordance with paragraphs 2 to 40 of this part 1 of the Schedule wherein the reference to "days" is a reference to calendar days.

Notice of intention to seek adjudication

2. Any party to this Agreement may give written notice ("**Notice of Adjudication**") of the intention to refer a Dispute to adjudication and the party or parties giving such notice shall be the "**Referring Party**" for the purposes of this Agreement.
3. The Notice of Adjudication shall be given to the other party or parties (as the case may be) to the Dispute and the party or parties receiving the Notice of Adjudication shall each be the "**Responding Party**".
4. The Notice of Adjudication shall set out briefly:
 - 4.1 the nature and a brief description of the Dispute and the parties involved;
 - 4.2 details of where and when the Dispute has arisen;
 - 4.3 the nature of the redress which is sought; and
 - 4.4 the names and addresses of the parties (including the addresses which the parties have specified for the giving of notices).

5. The adjudicator selected to consider the Dispute shall be selected from one of the panels ("Panels") appointed by the parties in accordance with the following:
 - 5.1 there shall be four Panels, one in respect of legal matters, ("Legal Panel"), one in respect of construction matters and construction/operation interface matters ("Construction Panel"), one in respect of operational and maintenance matters ("Operations Panel") and one in respect of financial matters ("Financial Panel").
 - 5.2 each Panel shall be comprised of four members, who are listed in part 2 of the Schedule to this Agreement.
 - 5.3 if any member of a Panel resigns or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties as a member of the Panel, a replacement shall be appointed by the parties to the Dispute as soon as practicable. Any such replacement shall be wholly independent of the CEC, SW or any Relevant Authority, any Approvals Body, the Tram Supplier or any party associated with the Edinburgh Tram Network, and any successor to or subsidiary or parent of any of the aforementioned parties. If the parties to the Dispute are unable to agree on the identity of such replacement(s), the President or Vice President for the time being of The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers shall appoint such replacement(s) within 30 days of any application for such appointment by any party to the Dispute.
6. The Referring Party shall at the same time as giving the Notice of Adjudication to the Responding Party will send to each of the members of the relevant Panel a copy of the Adjudication Notice and a request that each member of the relevant Panel advises the parties within three days as to whether or not he is able and willing to act. The parties shall attempt to agree within two further days as to which one of the members of the relevant Panel who responded indicating that they are able and willing to act shall be requested to act as adjudicators. In the event that such agreement is reached, the Referring Party shall, within a further period of one day, request the member of the relevant Panel upon whom agreement has been reached to act as adjudicator. In the event that such agreement is not reached, the Responding Party or Parties (as the case may be) shall, within a further period of two days, select one of the members of the relevant Panel who responded indicating that they are able and willing to act and the Referring Party shall request that member to act as adjudicator.

7. If no member of the relevant Panel indicates that he is able and willing to act within three days of receiving a request to act as adjudicator, the Referring Party shall request the Chairman or the Vice-Chairman for the time being of The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers to select a person to act as adjudicator.
8. Any person appointed, requested or selected to act as adjudicator in accordance with paragraphs 6, 7 and 11 shall be a natural person acting in his personal capacity. A person appointed, requested or selected to act as an adjudicator shall be wholly independent of tie, CEC, SW, any Relevant Authority, any Approvals Body, the Tram Supplier, any party in contract or providing goods or services in relation to the Edinburgh Tram Network, and any successor or subsidiary or parent of the aforementioned parties.
9. The request referred to in paragraph 7 shall be accompanied by a copy of the Notice of Adjudication.
10. The Chartered Institute of Arbitrators (Scottish Branch) or the Institution of Civil Engineers must communicate the selection of an adjudicator to the Referring Party within three days of receiving a request to do so.
11. Where the Chartered Institute of Arbitrators (Scottish Branch) or the Institute of Civil Engineers fails to comply with paragraph 10 above, the Referring Party may:
 - 11.1 agree with the other parties to the Dispute to request a specified person to act as adjudicator; or
 - 11.2 request any other adjudicator nominating body to select a person to act as adjudicator. An "adjudicator nominating body" shall mean a body (not being a natural person and not being a party to the Dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do so by a Referring Party.
12. The person requested to act as adjudicator in accordance with the provisions of paragraph 6, paragraph 7 or paragraph 11 shall indicate whether or not he is willing to act within two days of receiving the request.
13. Where an adjudicator has been selected in accordance with paragraph 6, 7 or 11, the Referring Party shall, not later than seven days from the date of the Notice of Adjudication, refer the Dispute in writing (the "**Referral Notice**") to the adjudicator.

14. A Referral Notice shall be accompanied by copies of, or relevant extracts from the Agreement and such other documents as the Referring Party intends to rely upon.
15. The Referring Party shall, at the same time as he sends to the adjudicator the documents referred to in paragraph 13 and paragraph 14, send copies of those documents to the Responding Party.
16. The adjudicator may, with the consent of the parties, adjudicate at the same time on more than one Dispute under the Agreement.
17. The parties may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these Disputes.
18. An adjudicator may resign at any time on giving notice in writing to the parties.
19. An adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.
20. Where an adjudicator ceases to act under paragraph 18 or 19, or dies or becomes incapax or ill to the extent of being unable to reasonably discharge his duties;
 - 20.1 the Referring Party may serve a fresh notice in accordance with paragraphs 2 to 4 and shall in accordance with paragraphs 5 to 12 request an adjudicator to act; and
 - 20.2 if requested by the new adjudicator, the parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
21. The parties may at any time agree to revoke the appointment of the adjudicator and in such circumstances the fees and expenses of that adjudicator shall, subject to paragraph 22, be determined and payable in accordance with paragraphs 38 and 39.
22. Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the parties shall not be liable to pay the adjudicator's fees and expenses.

Powers of the adjudicator

23. The adjudicator shall:
 - 23.1 act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the Agreement and shall reach his decision in accordance with Scots law; and
 - 23.2 avoid incurring unnecessary expense.

24. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed in the adjudication. In particular, he may:
 - 24.1 request the other parties to the Dispute to supply him with such documents as he may reasonably require including, if he so directs, any written statement from the other parties to the Dispute supporting or supplementing the Referral Notice and any other documents given under paragraphs 13 to 15;
 - 24.2 conduct the adjudication in the English language and decide whether a translation of any document is to be provided and, if so, by whom, by when, and at whose cost;
 - 24.3 meet and question the other parties to the Dispute and their representatives;
 - 24.4 subject to obtaining any necessary consent from a third party or the parties, make such site visits and inspections as he considers appropriate, whether accompanied by the parties or not;
 - 24.5 subject to obtaining any necessary consent from a third party or the parties to the Dispute, procure the carrying out of any tests or experiments, and make directions as to the conditions for and responsibility for the cost of the same;
 - 24.6 obtain and consider such representations and submissions as he requires, and, provided he has notified the parties to the Dispute of his intention, appoint experts, assessors or legal advisers;
 - 24.7 give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with; and
 - 24.8 issue other directions relating to the conduct of the adjudication.

Adjudicator's decision

30. Unless otherwise agreed in accordance with paragraphs 42.1 and 43.1, the adjudicator shall reach his decision not later than:
 - 30.1 twenty eight days after the date of the Referral Notice mentioned in paragraph 13;
 - 30.2 forty two days after the date of the Referral Notice if the Referring Party so consents;
or
 - 30.3 such period exceeding twenty eight days after the Referral Notice as the parties to the Dispute may, after the giving of that notice, agree.

31. Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph 30:
 - 31.1 the other party or parties (as the case may be) may serve a fresh notice in accordance with paragraphs 2 to 4 and shall request an adjudicator to act in accordance with paragraphs 5 to 13; and
 - 31.2 if requested by the new adjudicator the parties shall supply him with copies of all documents which they had made available to the previous adjudicator.

32. As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the parties.

33. The adjudicator shall decide the matters in the Dispute and may make a decision on different aspects of the Dispute at different times.

34. The adjudicator may take into account any other matters which the parties agree should be within the scope of the adjudication or which are matters under the Agreement which he considers are necessarily connected with the Dispute and, in particular, he may:
 - 34.1 open up, review and revise any decision taken or any notice certifying payment given by any person referred to in the Agreement, unless the Agreement states that the decision or notice certifying payment is final and conclusive;
 - 34.2 decide that any of the parties to the Dispute is liable to make a payment under the Agreement (whether in sterling or some other currency) and, subject to the terms of the Agreement, when that payment is due and the final date for payment.

35. The adjudicator shall provide written reasons for his decision.

Effect of the decision

36. In his decision, the adjudicator may, if he thinks fit, order one, both or all of the parties (as the case may be) to comply peremptorily with his decision or any part of it. In the absence of any directions by the adjudicator relating to the time for performance of his decision, the parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the parties in accordance with paragraph 32.
37. The decision of the adjudicator shall be binding on the parties, and they shall comply with it, until the Dispute is finally determined by legal proceedings or by agreement between the parties.
38. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him and the parties shall be jointly and severally liable to pay that amount to the adjudicator.
39. Without prejudice to the right of the adjudicator to effect recovery from the parties in accordance with paragraph 38, the parties shall each be liable to pay an equal share of the adjudicator's fees and expenses.
40. The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator shall be similarly protected from liability.

Related Disputes

41. Notwithstanding the terms of clauses 10.2, 10.3, 10.6, 10.7, 10.8 and 10.9 of this Agreement, in the event that a dispute or potential dispute under, or in connection with any of the Related Contracts, has arisen or arises out of substantially the same issues of fact and/or law (as the case may be) as a Dispute under the Agreement (a "**Related Dispute**"), then providing that the Related Contract contains dispute resolution provisions in terms substantially the same as set out in the Dispute Resolution Procedure (save for necessary changes), **tie** may require and direct that the Dispute and the Related Dispute be dealt with together at an appropriate stage of the Dispute Resolution Procedure.
42. In the event that a Related Dispute has already been referred to the decision of an adjudicator in accordance with the provisions of the Related Contract, and **tie** is of the opinion that a

Dispute is to be (but has not yet been) referred to adjudication under part 1 of the Schedule, **tie** may refer the Dispute, or may by notice in writing to the other party or parties (as the case may be) to the Dispute require that the Dispute be referred (as the case may be) to the adjudicator appointed under the Related Contract to decide upon the Related Dispute, and:

42.1 the adjudicator shall, if practicable, hear the Dispute at the same time as the Related Dispute and shall request such extension of time for producing his decision or award as he may require in order to reach a decision in respect of each of the Dispute and the Related Dispute at the same time. The parties shall agree to such request for an extension of time except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the parties, all parties to the Related Dispute and the adjudicator);

42.2 except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the parties, all parties to the Related Dispute and the adjudicator), the adjudicator shall have power (if so requested by **tie**) to make his decisions or awards in the Dispute and the Related Dispute in such a manner as if the rules applicable in the Court of Session, Scotland as to the joining of one or more defenders or third parties or conjoining actions were applicable to the parties to the Dispute and the Related Dispute, and to the adjudicator; and

42.3 **tie** shall procure that, as soon as practicable, the other party or parties to the Related Dispute shall give the other party or parties to the Dispute copies of the Related Contract, the Referral Notice in the Related Dispute and any other documentation provided to the adjudicator by any party to the Related Dispute.

43. In the event that a Dispute has already been referred to the decision of an adjudicator, and **tie** is of the opinion that a Related Dispute is to be (but has not yet been) referred to adjudication, **tie** may refer the Related Dispute to the adjudicator appointed under the Adjudication Procedure to decide upon the Dispute, and:

43.1 the adjudicator shall, if practicable, hear the Related Dispute at the same time as the Dispute and shall request such extension of time for producing his decision or award as he may require in order to reach a decision in respect of each of the Dispute and

the Related Dispute at the same time. The parties shall agree to such request for an extension of time except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the parties, all parties to the Related Dispute and the adjudicator);

43.2 except in the event that the Dispute or the Related Dispute relates to "construction operations" within the meaning ascribed to that term by the Housing Grants, Construction and Regeneration Act 1996 (if applicable) (unless otherwise agreed by the Parties, all parties to the Related Dispute and the adjudicator), the adjudicator shall have power (if so requested by **tie**) to make his decisions or awards in the Dispute and the Related Dispute in such a manner as if the rules applicable in the Court of Session, Scotland as to the joining of one or more defenders or third parties or conjoining actions were applicable to the parties to the Dispute and the Related Dispute, and to the adjudicator;

43.3 as soon as practicable, **tie** shall give to the other party or parties to the Dispute copies of the Related Contract, the Referral Notice in the Related Dispute and any other documentation provided to the adjudicator by any party to the Related Dispute.

Part 2

Panels For Adjudication

CONSTRUCTION/OPERATIONAL

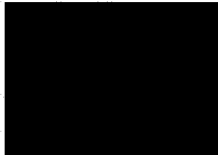
Alan Wilson



Peter Chapman



Tony Canham



Guy Cottam



FINANCIAL

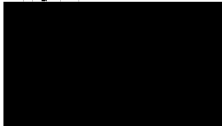
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LEGAL

Gordon Reid, QC



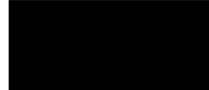
Robert Howie, QC



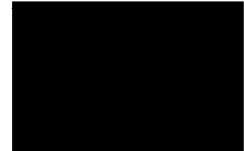
Lord Dervaird (Prof. John Murray, QC)



Gordon Coutts, QC



Angus Glennie, QC



Part 3

Notices

1. SW's address for the service of notices is:

Scottish Water
Castle House
6 Castle Drive
Dunfermline
Fife
KY11 8GG

All written notices to be marked: "URGENT: ATTENTION ASSET MANAGEMENT DIRECTOR"

with a copy to

Head of Legal Services
Scottish Water
Castle House
6 Castle Drive
Dunfermline
Fife
KY11 8GG.

2. CEC's address for the service of notices is:

City of Edinburgh Council
City Chambers
High Street
EDINBURGH
EH1 1YJ

All written notices to be marked: "URGENT: ATTENTION DIRECTOR OF CITY DEVELOPMENT"

3. **tie's address for the service of notices is:**

tie Limited
Verity House
19 Haymarket Yards
EDINBURGH
EH12 5BH

All written notices to be marked: "URGENT: ATTENTION CHIEF EXECUTIVE"

Part 4

Tram Project Affected Area

- equipotential bonding
- depot including siteworks, trackworks and building works
- seawall reconstruction/protection
- overtrack structures
- highway, street and footpath repaving as a result of any of the above



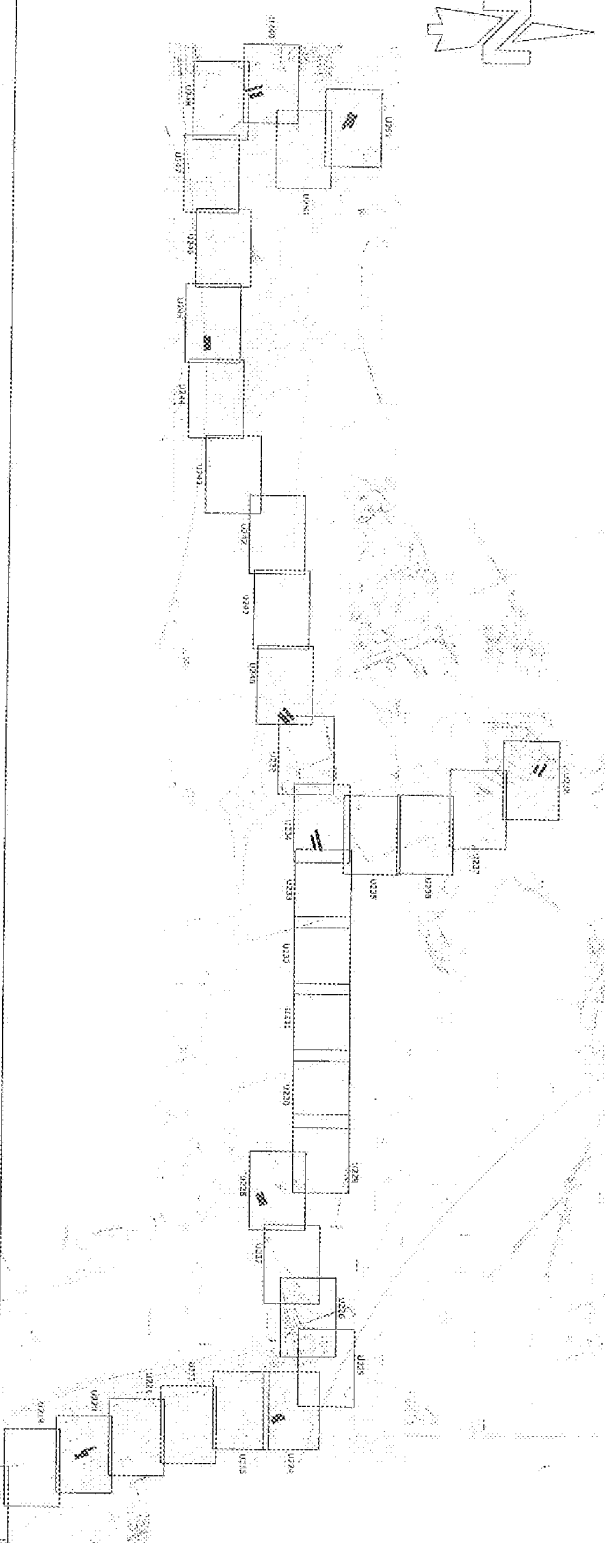
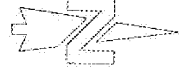
tie



CEC



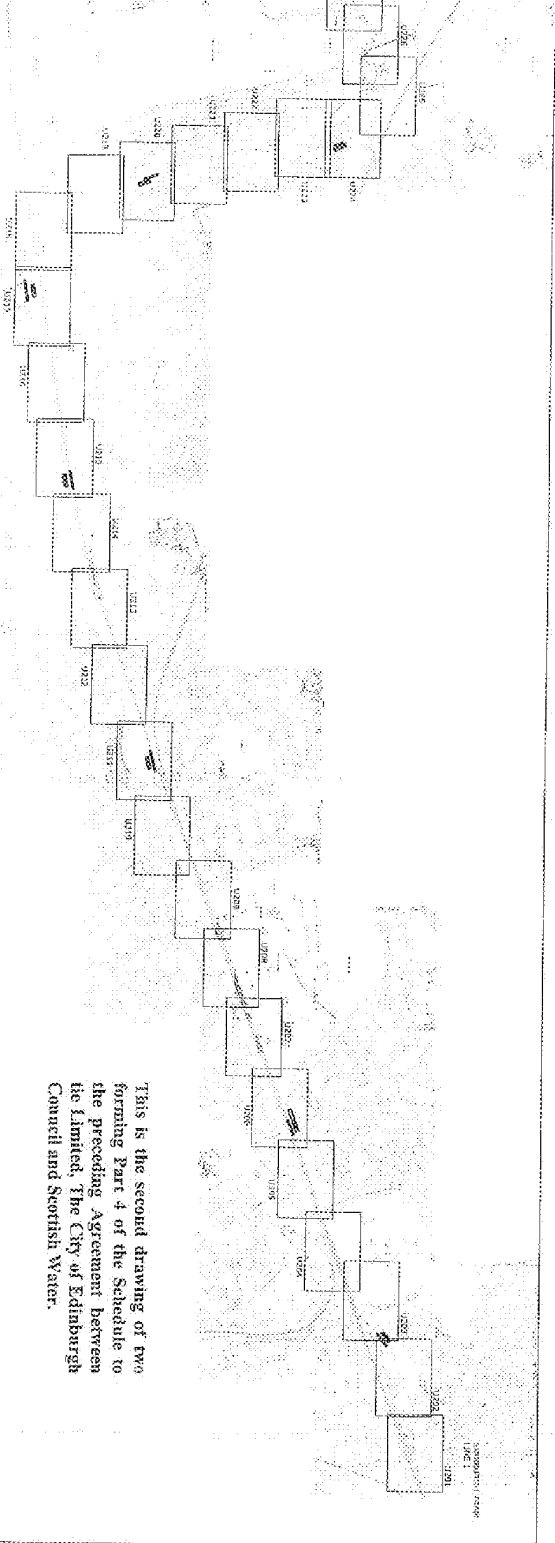
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CONT. ABOVE

Scale: 1:1000
 Date: 11/11/2003

CONT. BELOW



This is the second drawing of two forming Part 4 of the Schedule to the preceding Agreement between the limited, The City of Edinburgh Council and Scottish Water.

DATE: 11/11/2003
 DRAWN BY: JAW
 CHECKED BY: JAW

Approved for construction by the City of Edinburgh Council
 Date: 11/11/2003

Item No.	Description	Quantity	Unit
1	CONCRETE		
2	STEEL		
3	WOOD		
4	PAINT		
5	GLASS		
6	ELECTRICAL		
7	MECHANICAL		
8	PLUMBING		
9	LANDSCAPE		
10	TRAFFIC LIGHTS		
11	ROAD MARKINGS		
12	STREET LIGHTS		
13	POST BOXES		
14	TELEPHONE CABINETS		
15	WATER MAINS		
16	SEWER MAINS		
17	POWER MAINS		
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99	WATER SUPPLY MAINS		
100	SEWER MAINS		

EDINBURGH TRAM
 LINE TWO

Contract No: 11/0003
 Date: 11/11/2003
 Scale: 1:1000
 Drawn by: JAW
 Checked by: JAW
 Approved by: JAW
 Date: 11/11/2003

Contract No: 30894 / MMH / 11200
 Sheet: 5

Part 5

Working Party

Transco PLC

BT PLC

Scottish Power PLC

Thus PLC

NFL Group Limited

NTL National Networks Limited

Cable and Wireless Public Limited Company

Scotland Gas Networks Limited

Scottish Water

Part 6

Major Works

Any works relating to, or involving the construction, repair, removal, isolation, protection, reinforcement or enhancement of the following shall be major works for the purposes of the 1991 Act and the 2003 Regulations:

- track slab formation and trackbed where not trackslab
- overhead line and foundations
- tram stops
- substations
- electrical equipment
- drainage
- ducting
- facilitating earthworks, retaining walls, culverts, structures and foundations
- bus stops
- grading crossfalls and kerbs
- traffic intersection
- traffic intersection realignment
- street furniture and the relocation thereof
- street lighting
- noise barriers
- street and road signage
- cathodic protection equipment