

David Mackay  
tie Limited  
CityPoint  
65 Haymarket Terrace  
Edinburgh  
EH12 5HD

Date 5 January 2009  
Our Ref SS/1/AC  
Your Ref

Dear David

**EDINBURGH TRAM – TRAM MONITORING OFFICER**

Following an internal governance review, it should be noted that the Role of the Tram Monitoring Officer (TMO) as stated in the tram operating agreement will be fulfilled by Marshall Poulton, Head of Transport.

For completeness, I have attached a copy of the main duties highlighted in the operating agreement. It should be noted that as governance arrangements develop in the next few months this role may be subject to change.

I have asked Marshall to provide me with a brief monthly TMO update report for internal use only that details all the pertinent information.

If you require further information, please contact Andy Conway on 469 3785.

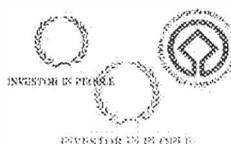
Yours sincerely

  
**Dave Anderson**  
Director of City Development

cc Marshall Poulton  
Duncan Fraser

**DAVE ANDERSON**  
DIRECTOR

City Chambers, High Street, Edinburgh EH1 1YJ



## Edinburgh Tram Monitoring Officer

### Obligations from tie to the Tram Monitoring Officer (TMO)

- tie shall ensure that all third party advisers and contractors engaged by it shall provide a direct duty of care to the Council in terms acceptable to the Council prior to carrying out any work in relation to the Project, failing which the appointment of any such third party will require the written approval of the Tram Monitoring Officer.
- tie shall at all times maintain in place appropriate policies of insurance in relation to all elements of its business and in particular the Project, provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as tie. tie shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms.
- tie shall ensure that all contractors and consultants engaged or employed by it in any capacity shall have in place a policy of insurance providing tie with appropriate indemnity for all risks relevant to their engagement provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as the contractor or consultant. tie shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms.
- tie shall provide to the Tram Monitoring Officer upon request, and in any event not less than annually, a report providing full details of all its insurances, including *inter alia* details of (i) the contractors or consultants providing insurance cover to tie and the Council and level of cover provided; and (ii) contractors or consultants not providing insurance cover and details of the authorisation obtained from the Tram Monitoring Officer in this regard.

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- tie will supply to the Tram Monitoring Officer copies of all relevant tie and other board papers in connection with the governance arrangements.
- The parties acknowledge the terms of the governance arrangements set out in Schedule 2 and tie shall use best endeavours to comply with this governance diagram. The parties agree that where this Agreement refers to tie reporting to, or obtaining approval from, the Council or as the case may be the Tram Monitoring Officer, all such activity shall be made in accordance with this governance diagram.
- tie shall liaise with the Tram Monitoring Officer, the Council, and any other bodies which the Council may specify, regularly and shall report to the Council on a four-weekly and annual basis with regard to financial matters and progress generally on the Project in a format acceptable to the Council.
- Immediately that tie becomes aware of the likelihood of delay to, or overspend in, the Project it shall notify the Tram Monitoring Officer at the earliest opportunity, informing them of the reasons for the potential delay or overspend and detailing any measures (together with costs) which may mitigate such potential delay or overspend.
- Immediately tie becomes aware that it requires a decision or information essential to the continuity of the Project from the Council to achieve key dates in the Project, tie shall give notice of such requirement to the Tram Monitoring Officer with full supporting information to mitigate any delay to the Project to the fullest extent possible.
- tie shall not settle any single claim in excess of £500,000, or series of claims in any 12 month period which would exceed in aggregate £1,000,000, without prior written approval from the Tram Monitoring Officer. All such claims approval will be subject to the governance arrangements set out in Schedule 2.

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- tie shall procure that it develops and has approved by the tie board a remuneration policy setting out *inter alia* the benchmarks and procedures for proposed bonus achievement and the project milestone outcomes to which any such bonuses are linked. Such policy to be approved by the tie board, through its Remuneration Committee, in advance of annual reporting periods as it will apply in the succeeding annual reporting period. tie's board shall confirm annually to the Tram Monitoring Officer that tie's incentivisation arrangements are aligned to appropriate Project milestones. The remuneration package, including incentivisation arrangements, of the Executive Chairman of tie will on appointment require approval by the Chief Executive of the Council and thereafter be determined annually by the tie board through its Remuneration Committee.
- tie shall not novate or otherwise transfer any rights or obligations under any contractual arrangement which the Council has approved and to which tie is a party without the prior written consent of the Tram Monitoring Officer.
- tie shall comply with the terms of all agreements to which it is a party unless authorised in writing by the Tram Monitoring Officer to do otherwise.
- tie shall produce a communications protocol and have this approved quarterly in writing by the Tram Monitoring Officer. The communications protocol will *inter alia* reflect the publicity arrangements referred to in Clause 2.5 of this Agreement.

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### **Obligations from the Council (TMO) to tie**

- The Council will nominate a Council officer to act as a liaison point for day-to-day communication between the Company and the Council.
- The Council will appoint a Tram Monitoring Officer. The first Tram Monitoring Officer will be the Director of City Development or their appointed nominee. The Council will use all reasonable endeavours to procure that the Tram Monitoring Officer will be a member of the TPB and a director of TEL.
- The Tram Monitoring Officer will be responsible for determining what approval is required from within the Council to allow them to give any consent or recommendation required in terms of this Agreement. The parties acknowledge that the Tram Monitoring Officer may require approval of their proposed actions from the full Council or from a relevant committee or sub-committee as appropriate.
- The Council acknowledges that tie continues to work on other projects in addition to the Project, but tie will use best endeavours to manage such projects in order that they do not conflict with the terms of this Agreement. Any work to be executed by tie on projects other than the Project must be approved by the Tram Monitoring Officer in advance of commitment by tie.

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