

AGREEMENT

between

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**”)

Whereas:-

1. The Council set up tie in May 2002 to assist the Council with implementing its local transport strategy;
2. Powers were conferred upon the Council 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;
3. The Council is the designated planning and roads authority for the City of Edinburgh;
4. In [2003], the Council appointed tie to facilitate the delivery and operation of the proposed tram system for Edinburgh [*Terms of formal appointment TBC*];
5. A general operating agreement between tie and the Council was previously entered into whereby tie agreed to provide services to the Council in developing, procuring and implementing integrated transport projects within Edinburgh;
6. The terms of the tram Final Business Case and the fact that tie was to enter into various agreements in relation to the Project were approved by the Council on 20 December 2007; and

Deleted: [

Deleted:]

Deleted: in September 2005

7. The parties now wish to enter into this agreement to more particularly regulate the relationship between the parties specifically with regard to the procurement and delivery of the trams Project.

Deleted: regulate the relationship between them in general terms and to

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

1 Definitions

1.1 In this Agreement the following terms and expressions shall have the following meanings:

| | |
|-----------------------------------|--|
| “Agreement” | means this agreement (including the schedules to it), as it may be amended from time to time; |
| “ <u>Tram</u> Monitoring Officer” | means the Council Officer nominated by the Council to monitor the Company; |
| “ <u>Employer’s Requirments</u> ” | means []; |
| “Final Business Case” | means the business case relating to the Project which was approved by the Council on 20 December 2007; |
| “Funding Agreement” | means the Council-accepted grant offer letter from Transport Scotland to the Council dated []; |
| “Legislation” | means all rules, regulations, by-laws, directives, statutes and other binding provisions in force from time to time; |
| “ <u>Phase 1A</u> ” | <u>means []</u> |
| “ <u>Phase 1B</u> ” | <u>means []</u> |
| “Project” | means the procurement and delivery of a tram system for Edinburgh (<u>Phase 1A and Phase 1B</u>), as more |

Deleted: Company

Deleted: “Edinburgh Tram Line One”

Deleted: “Edinburgh Tram Line Two”

Deleted: means [];

Deleted: []

Deleted: Edinburgh Tram

Deleted: Line One and Edinburgh Tram Line Two

| | |
|------------|--|
| | particularly described in the Final Business Case and approved by the Council in terms of scope; and |
| “Services” | means the services, service levels and specification of services set out in the schedule to this Agreement, or as otherwise agreed in writing between the parties from time to time. |

Deleted:][TBC]

- 1.2. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of it.
- 1.3. In this Agreement, references to clauses are, unless otherwise provided, references to clauses of this Agreement and references to schedules are references to the appropriate schedules to it.
- 1.4. In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice-versa.

2. tie’s Obligations

- 2.1 tie hereby agree to provide the Services to the Council throughout the duration of this Agreement in order to assist in, carry out, promote, manage and administer the Project.
- 2.2 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 approval of the Tram Monitoring Officer.
- 2.3 tie shall ensure that it delivers a world-class tram system for Edinburgh as specified in the Final Business Case and the Employer’s Requirements. tie shall comply with all timescales and financial projections detailed in the Final Business Case.
- 2.4 tie shall use best endeavours to ensure that it is at all times suitably resourced to carry out all the Services in relation to the Project.
- 2.5 tie shall use best endeavours to ensure that it does not cause the Council to

Deleted: Company

Deleted: comply with the terms of the

Deleted: take all reasonable steps to

Deleted: take all reasonable steps to

breach the terms of the Funding Agreement. In particular tie shall ensure that the Council complies with the conditions relating to publicity in the Funding Agreement.

Deleted: complies at all times with

Deleted: and to ensure that, where it acts on the Council's behalf, it ensures that the Council complies with such terms at all times

2.6 tie shall use best endeavours to ensure that it complies with and, where it acts on the Council's behalf, ensure that the Council complies with, all Legislation (including all health and safety legislation) relevant to the Project at all times.

Deleted: take all reasonable steps to

2.7 tie shall use best endeavours to ensure that it does not infringe the intellectual property rights of any third party at any time.

Deleted: take all reasonable steps to

2.8 tie shall use, and shall procure that all contractors, employees and other third parties which it engages shall use, all reasonable skill, care and diligence in the provision of the Services. All work undertaken by tie shall be progressed with due expedition and without delay to achieve timeous completion of the Project.

2.9 tie shall discharge all its obligations in terms of this Agreement in a proper, honest, faithful and diligent manner and shall at all times act in the best interests of the Council (to the fullest extent permitted by law).

Deleted: commercial,

2.10 Insofar as permitted by law, tie shall at all times promptly comply with all reasonable requests made of it by the Council.

2.11 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 and shall provide evidence of all such insurances upon request by the Council. [*tie to ensure that all insurance shall be in joint names so that the Council is covered?*]

2.12 tie shall ensure that all contractors and consultants engaged or employed by it shall have in place a policy of insurance providing tie [*and the Council*] with appropriate indemnity for all risks relevant to their engagement.

Formatted: Font: Bold, Italic

2.13 tie shall use best endeavours to ensure best value when providing the Services and in the discharge of all of tie's responsibilities. tie shall use best endeavours to ensure best value in the use of funds or resources provided through or by the Council.

Deleted: take all reasonable steps to

Deleted: also take all reasonable steps to

2.14 tie shall continue to apply principles of good corporate governance and to adopt and adhere to the Council's Code on Corporate Governance (approved by the Council on 29 June 2006) as it may be amended from time to time.

2.15 tie shall allow the Council, its auditors or the Council's other delegated appointees to examine the books, accounts and other records kept by tie (and any subsidiary undertakings of tie) and shall supply the Council with such financial and other information as it may reasonably request from time to time to keep the Council fully informed about the business of tie (and any subsidiary undertakings) and to protect the Council's interests in relation to the terms of this Agreement. tie will supply copies of all board papers to the Tram Monitoring Officer.

Deleted: Company

2.16 tie shall use best endeavours to ensure that it and all third parties it engages and/or contracts with to carry out any works shall at all times comply with all equalities legislation and shall act in a non-discriminatory manner.

Deleted: take all reasonable steps to

2.17 tie shall liaise with the Council, and any other bodies which the Council may specify, regularly and shall report to the Council on a four-weekly basis with regard to financial matters and progress generally on the Project in a format acceptable to the Council.

Deleted: [

Deleted:]

2.18 Immediately that tie becomes aware of the likelihood of delay to, or overspend in, the Project it shall notify the Council at the earliest opportunity, informing it of the reasons for the potential delay or overspend and any measures (together with costs) which may mitigate such potential delay or overspend.

2.19 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 Council with full supporting information to mitigate any delay to the Project to the fullest extent possible.

2.20 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.

Deleted: Council Monitoring Officer

2.21 tie shall not appoint any employee or consultant with a remuneration or fees over £75,000 without prior written approval from the Tram Monitoring Officer.

Deleted: Council Monitoring Officer

2.22 All bonus schemes proposed by tie require to be approved by the Council. tie shall not award any bonus to any employee or contractor without prior written approval from the [Tram Monitoring Officer] of the bonus scheme terms. tie shall supply the Council all information which the Council may reasonably

Deleted: by the Council

require in order to assess any proposed scheme and the outcomes to which any such bonuses are linked.

- 2.23 tie will provide a business plan to the Council on an annual basis.
- 2.24 tie shall use best endeavours to ensure that it and all contractors engaged by it protect the Council's reputation all at times in matters relating to the Project.
- 2.25 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.
- 2.26 tie shall comply with the terms of all agreements to which it is a party, *[issue is to ensure tie complies with agreements, but not if it is considered best to breach the terms and the Council agrees with this assessment]*
- 2.27 tie shall comply with the governance diagram set out in [Schedule 2][*which issues are to be referred to TPB and which direct to the Council?*].
- 2.28 tie warrant that they have at all times complied with the terms of the existing operating agreement between tie and the Council and have at all times acted, insofar as lawful, in the best interests of the Council.
- 2.29 tie shall obtain prior written approval for all announcements or publicity relating to the Project from the Tram Monitoring Officer.
- 2.30 tie will be subject to an independent peer review panel concerning the management of the Project (including all the contract documentation) and will implement all recommendations of the panel once approved by the Council.

Deleted: take all reasonable steps to

Deleted: Council Monitoring Officer

Deleted: unless authorized in writing by the Council Monitoring Officer to do otherwise

Formatted: Font: Bold, Italic

Formatted: Bullets and Numbering

Formatted: Font: Bold, Italic

3. Council's Obligations

- 3.1 On the basis that tie has, in the opinion of the Council, provided adequate evidence that expenditure has been properly and appropriately incurred in relation to the provision of the Services and the Project as agreed by the Council in advance of expenditure commitment, the Council will secure funding for such expenditure and shall pass funding to tie to allow tie to discharge its obligations in terms of this Agreement.
- 3.2 [Terms of appointments of Council officers/members to tie Board to be considered].
- 3.3 The Council will nominate a Council officer to act as a liaison point for day-to-day communication between the Company and the Council.

Deleted: reasonable

3.4 The Council will appoint a Tram Monitoring Officer.

Formatted: Indent: Left: 0 pt, Hanging: 36 pt

3.5 The Tram Monitoring Officer will be responsible for determining what approval is required from within the Council to allow him to give any consent or recommendation required in terms of this agreement. The parties acknowledge that the Tram Monitoring Officer may require to obtain approval of his proposed actions from the full Council or from a relevant committee or sub-committee.

Deleted: Company

3.6 The Council will ensure that, in the Council's opinion, adequate personnel are made available to the Project to fulfill the Council's role in relation to the Project and that all such personnel shall use reasonable skill and care in executing their responsibilities.

4. Term

4.1 This Agreement shall commence on [2008] and shall continue until termination is agreed between the parties, unless otherwise terminated earlier in accordance with its terms.

5. Indemnity

5.1 tie is wholly responsible for meeting timeously all obligations, liabilities or claims of whatsoever nature arising out of or in connection with the implementation of its obligations under this Agreement. [tie shall indemnify the Council, its officers, employees and agents from and against all costs, expenses, actions, claims, demands and other liabilities which the Council or its officers, employees and agents may suffer which arise from tie, its employees or its other appointed representatives breaching the terms of this Agreement. [[TBC]

Formatted: Font: Bold, Italic

6. Termination

6.1 Either party may terminate this Agreement immediately by giving notice to that effect to the other if the other party is in material breach of its obligations and has failed to remedy that breach (assuming it is capable of remedy) within

14 days of receiving such notice.

7. Dispute Procedure

7.1 Any dispute or difference between the parties as to the meaning or intent of this Agreement or the implementation thereof or as to any other matter in any way arising out of or in connection with this Agreement shall be referred to the decision of an Arbitrator to be mutually agreed between the parties or, failing agreement, to be appointed by the President for the time being of the Law Society of Scotland. The decision of such Arbitrator shall be final and binding on both parties. The application of Section 3 of the Administration of Justice (Scotland) Act 1972 is hereby expressly excluded.

8. Transfer and Sub-contracting

8.1 This Agreement is personal to tie and tie shall not assign, novate, sub-contract or otherwise transfer by any means whatsoever any right or interest or obligation which it may have in or under this Agreement without the prior written consent of the Tram Monitoring Officer.

Deleted: Council Monitoring Officer

8.2 For the avoidance of doubt, the Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement.

9. Notices

9.1 Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally, by fax or first class post or by email. In the case of posting, such notice will be deemed to have been given three working days after the date of posting; in the case of fax or email, the next working day; and in the case of personal delivery, at the time of delivery. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or at any other address or fax number notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement. All email notices shall be sent to either [] at tie or [] at the Council.

Deleted: f

10. **Freedom of Information**

10.1 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.

11. **Nature of Relationship**

11.1 This is an Agreement between two independent contracting parties and nothing in this Agreement shall create a relationship of agency or partnership between the parties with regard to its subject matter.

11.2 Nothing in the Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a local authority or in terms of any Legislation.

12. **Entire Agreement and Variations**

12.1 This Agreement and the attached schedules constitute the entire agreement between the parties in relation to their subject matter. Each party confirms that it has not relied upon any representation, undertaking or warranty not recorded in this document in entering into this Agreement. No variation of this Agreement shall be effective unless confirmed in writing and signed by authorised signatories of both parties to this Agreement. This agreement supersedes any prior agreement in relation to its subject matter.

Deleted: c

13. **Severability**

13.1 If any term of this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such term or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

14. **Waiver**

14.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided for in this Agreement) are not exclusive of any rights or remedies provided by law.

15. **Governing Law and Jurisdiction**

15.1 This Agreement is governed by the Laws of Scotland and, subject to the terms of clause 7, the parties submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding [] pages and the attached Schedules are executed as follows:

Subscribed for and on behalf of The City of Edinburgh Council at _____ on
day of _____ 2007

Witness.....

Full Name.....
Proper Officer

Address.....

.....

Subscribed for and on behalf of tie Limited at _____ on _____ day of
2007

Director.....

Director/Secretary.....

SCHEDULE 1

[Terms and scope of “Services” to be provided by tie to the Council require to be further defined in this schedule – further discussion required as to whether a schedule is required]

Services to be provided

- Procurement of SDS, MUDFA, Infraco & Tramco, including due diligence/audits [this will be done coterminously with close and signing the Operating Agreement, to the extent not already done, so the requirement can be removed. See also comments about an over-arching approval to enter into the contracts in my email]
- Tie will comply with Transport Scotland’s four week reporting requirements and payment application terms in relation to the Project [Covered by the compliance with the Funding Agreement clause 2.17]
- Tie must provide the Council with four-weekly cash flow forecasts and financial statements, in the agreed format in relation to the Project and also provide annual figures [Covered by 2.5]
- Provide accurate and current information to Tram Project Board, Transport Edinburgh Limited and the Council for appropriate decision making and approvals [as for peer review ?]
- Manage, financially control and timeously execute the SDS, Mudfa, Infraco and Tramco contracts, including managing change controls [add change control to the body of the document ?]
- Effectively and efficiently identify and manage the Project risks and appropriately advise the Council (including reputational, financial, design, third party, etc) [as for change control ?]
- Employ where appropriate the Traffic Management Team so as to effectively control the temporary and permanent traffic management both on and off line, as necessary
- Provide Health & Safety assessments (including HMRI, CDM etc) [include in body]
- Provide Design & Systems assurances [not sure what this means]
- Provide effective communications, consistent with the agreed strategy [include in body]
- Ensure that all contracting parties meet all their obligations (including protocols, traffic management, contract conditions, employer’s requirements, site supervision and testing etc) ditto
- Provide the necessary site supervision and management to ensure the assured quality outcomes consistent with the contract requirements, protocols and other agreements with the Council, transport stakeholders and other third parties.
- Deliver the agreed Value Engineering
- Implement and manage the Traffic Regulation Order process ditto
- Effectively liaise with Transport Edinburgh Limited through to the handover ditto
- Take responsibility for the Project land in a manner acceptable to the Council
- Act with due diligence towards the Council’s interest and specifically to enact the agreed recommendations from OGC already in the document, OGC will be history

Deleted: <#>Conclude and comply within the Final Business Case [is also a CP and is too broad – see email]¶
Tie will be subject to an independent peer review panel concerning the management of the Project (including all the contracts) and will implement all recommendations of the panel once approved by the Council [Include in body of document ?]

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Deleted: <#>Provide the necessary Site Supervision to ensure the assured quality outcomes consistent with the contracts requirements ditto¶

- Manage all third party agreements relating to the Project in an effective manner and in the Council's best interests include in document
- Enactment of the project consistent with the agreed Final Business Case already covered
- Procure appropriate legal advice so as to enable the Council to comply with its statutory obligations
- Carry out other duties as instructed by the Council

DRAFT **tie** Operating Agreement – **tie** note of concerns 3.12.07

The note below is an extract from an email to Nick Smith of CEC Legal. The more important issues are highlighted by underlining, unfortunately this is most of them. The paragraph references relate to the attached draft document, but the points below should be largely self-explanatory.

Nick, here are my comments on the v9 version received on 28.11.07.

I have not yet received a workable copy of the TEL agreement so there will need to be a parallel set of comments when it emerges. Some TEL matters are highlighted below but these cannot be regarded as exhaustive.

1. A fundamental issue to address is the medium by which **tie** receives delegated authority from CEC to enter into the contracts – you have seen the emails which highlight BBS's request for urgent clarification on this. Andrew's advice is that this is enshrined in the Operating Agreement; we understand that the Council wishes to create the authority by Council minute on 20/12. Either way the wording needs to be developed and agreed on our collective side and communicated to BBS urgently.
2. In a similar vein, BBS are now expressing disquiet about the lack of confirmation from CEC on the performance guarantee terms. Again you have the detail. The Operating agreement will need to reflect the arrangement when the final form is agreed.
3. Does this agreement encompass all of **tie**'s projects and the possibility of future projects? If not, we must develop an agreement which does in tandem with the agreement for trams, as the other projects are underway and **tie** cannot be in a position of acting ultra vires. Do you anticipate that the current agreement will run in parallel with this new one, even though it accommodates EARL ? The logical approach would be to have a single new agreement.
4. Following point 3, the "Tram monitoring Officer" is defined as the person who monitors "the company" – we need to be clear about this: is he /she active on tram matters only or all projects plus other corporate matters?
5. What delegated authority does the TMO have, or does **tie** assume he / she has full power to commit the Council? I now see #3.5, but this is open-ended and gives no steer on what authority the TMO has ; it will therefore not be clear day-to-day what authority **tie** can act upon. Can there not be a clear statement of the TMO's delegated authority?
6. As noted previously, I think the attempt to define a full menu of specific services provided by **tie** will prove futile and potentially dangerous as it cannot be comprehensive. The operational services required of **tie** can be summarized in relation to the tram project and the other projects **tie** is undertaking. Mechanics like reporting and audit together with specific prohibitions on action can be properly defined in addition to the operational services required of **tie**.

7. #2.1 defined as project, not company; see 3 above. Ditto 2.4.
8. #2.3 tie cannot “ensure” delivery of a world-class system – this needs a best endeavors qualification. I also don’t like the attribution of a judgemental phrase like “world-class” in a legal document, the reference to the Business case is sufficient to define the quality standard.
9. #2.5, tie cannot “ensure” that the Council complies with the publicity conditions in the Funding Agreement, needs a best endeavors qualification. I acknowledge the relationship with the Funding Agreement where similar requirements exist and we need to make sure these are sensibly aligned.
10. #2.6 – as point 9 in relation to Council compliance with legislation.
11. #2.8 – as point 9 in relation to third party performance ; tie cannot procure a level of efficiency from third party contractors, but it can be required to seek that this is delivered, failing which tie will be required to take action appropriate in the circumstances.
12. #2.11 and #2.12 - you have suggested wording for these two clauses from Tracey Kinloch to codify responsibilities for insurance arrangements, with the addition of a new clause (“2.15” on Tracey’s note) relating to Liability and PI insurance.
13. #2.21 requires all hiring of people with salary > £75k to be approved by the Tram Monitoring Officer. However, the Business Case sets out the resource plan for the project and it is tie’s responsibility to take best endeavors to ensure adequate resourcing under #2.4. The responsibility for recruitment and the relative level of pay and rations should be a tie responsibility not requiring specific approval. The Remuneration Committee formally handles all senior level remuneration, including new recruits.
14. #2.22- similar to 2.21, but this catches all “bonus schemes” which require approval by “the Council” not simply the TMO. This is a very intrusive proposal and effectively means the Remuneration committee has no role in this area. It also raises questions of confidentiality. I understood the concern was to have tie commit to bonus schemes only where the performance measures were aligned with project milestone achievement. I would doubt if anyone would resist that requirement, but individual by individual approval is unlikely to be appropriate.
15. #2.26 – agree the concern and suggest we revert to the previous wording which prohibited tie from knowing breach of contract compliance unless with approval from the TMO.
16. #2.27 – this is also affected by the point at 3 above. For tram matters, all issues outwith tie’s delegated authority will be referred first to the TPB, then it is the TPB’s responsibility to deal with matters requiring TEL or Council approval. The

current structure of delegated authority between the **tie** team, TPB and TEL will be reviewed and if thought appropriate re-approved by the TPB this Friday. We don't expect the limits to change, based on informal discussions to date. We are awaiting the terms of the authority delegated by the Council to its **tie** and Tram committees and then to the TMO to ensure these matters are all properly aligned.

17. #2.28 – this new clause asks **tie** to warrant that it has complied at all times with the present Operating Agreement and (with or without a materiality qualification) will necessitate a wholesale review of its terms and of the actions taken by the Board since the agreement was enacted. This cannot be a good use of resource and it is not clear to me what the Council is trying to achieve here. The lack of this clause would not prevent the rest of the agreement standing on its own feet, so I suggest it is deleted. I appreciate that it may help confirm in the mind of BBS that everything to date has been done with proper process, but we should be able to argue that this is so, in the absence of any contrary evidence.
18. #2.29 – See also 9 above. I do not believe it is in the interests of **tie** and the Council to have every announcement / item of publicity (undefined) approved in writing by the TMO before issue. Needs some qualification, aligned with TS deal.
19. #2.30 – what is the scope and frequency of the proposed “review by a peer review panel”? The **tie** directors will need to know what they are agreeing to comply with.
20. #3.1 – you have removed my suggestion that the Council must act reasonably in assessing the validity of **tie**'s expenditure before providing funding. This will cause difficulty because the directors must have a reasonable basis for assuming they have the funding to cover expenditure commitments they undertake. A lack of any codification of the Council's approach to approval leaves this more exposed than it should be. Please reconsider the inclusion of the reasonableness requirement.
21. #3.2 – can you suggest wording to cover appointment to (and removal from ?) the **tie** Board.
22. #3.3 the “liaison officer” appears not to be the same as the TMO, so can the relationship be addressed, including delegated authority if any, so that people know what the role of the liaison officer is.
23. #5.1 – I doubt if the directors will be prepared to enter into an open-ended indemnity to the Council. Moreover, it has no balance sheet. The real value of the indemnity is therefore zero and I'd suggest the clause is removed. In addition, you have wording from us which requires that the Council agrees not to claim against any individual director, officer, employee or self-employed contractor, which we believe is a necessary protection.
24. #8.2 – the one-way assignation ability in favour of the Council underlines the need for **tie** to ensure that it is under no potentially onerous conditions. Can

assignment not require mutual agreement; **tie** is a wholly-owned subsidiary so the Council can empty the **tie** Board whenever it wishes, if an assignment were resisted by the **tie** Board.

25. #11.1 states that the agreement is between two independent parties, please see comments in final paragraph below about competition law.

There is an underlying point to all of this. The more we try to draft the agreement as if it were between two third parties, the more difficulty there is in agreeing the language. More importantly, we have had legal advice against the development of a comprehensive agreement of a third party nature because it mitigates against the concept of a "single economic entity" in the context of a competition law and the proposed integrated operations. We must bear this in mind when addressing the wording. A more informal approach will enable us to reach agreement quickly and help to reduce the risk under competition law. Andrew will advise us on this, my interest is in reflecting the reality of the parent / subsidiary relationship to enable us to finalise these matters quickly.

I hope this is a comprehensive view of all the issues. Please let me know if you can attend the proposed meeting at 8.30am on Wednesday morning.

Regards
Graeme

Graeme Bissett

m : [REDACTED]