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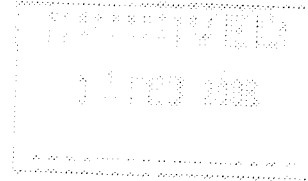
Attention: Ian Kendall
TIE Limited
Verity House
19 Haymarket Yard
EDINBURGH
EH12 5BH

Your reference

Our reference

AS/ND/11029/14
8778544.1

6 February 2006



Dear Ian

**EDINBURGH TRAM NETWORK
BT AGREEMENT**

I am pleased to enclose the BT engrossments, duly signed on behalf of BT. I would be grateful if you could sign the agreements where indicated and, in particular, on page 24 in the presence of a witness.

Please also complete the date of signing.

Please then return one fully signed copy to me in order that I may send it on to BT and retain one principal copy for your own records.

Kind regards

Yours sincerely



ANITA SALWAN
Solicitor
DLA PIPER RUDNICK GRAY CARY SCOTLAND LLP

anita.salwan@dlapiper.com

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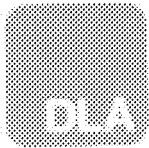
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A list of members is open for inspection at its registered office and principal place of business, Herald Square, Es, 10th Fl, 201 2AA and at the address at the top of this letter. Partner denotes member of a limited liability partnership.

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DLA PIPER RUDNICK
GRAY CARY

Confidential

(1) **the LIMITED**

- and -

(2) **BRITISH TELECOMMUNICATIONS PLC**

AGREEMENT

relating to
works concerning BT equipment and
apparatus in respect of the Edinburgh Tram
Network

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AGREEMENT

BETWEEN

- (1) **the LIMITED** (Company number SC230949), a wholly owned subsidiary of CEC, whose registered office is situated at City Chambers, High Street, Edinburgh EH1 1YJ ("**the**") and its successors or assigns;
- (2) **BRITISH TELECOMMUNICATIONS PLC**, (Company number 1800000) whose registered office is at 81 Newgate Street, London EC1A 7AJ ("**BT**") and its successors or permitted assigns.

WHEREAS

- (A) The City of Edinburgh Council ("**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) **the** 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) As part of the Authorised Works permitted under the Bills, the Authorised Undertaker requires to carry out certain utility diversion works in respect of BT's and other's equipment and apparatus.
- (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 BT Planned Works or the works of other statutory undertakers.
- (E) 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: "Act" shall mean either one of the Acts;
- 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 all Authorised Works (i) 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, and (iii) are agreed pursuant to clauses and 2.7, 2.8 and 5.5;
- 1.1.4 **"Agreement"** means this agreement and its Schedule;
- 1.1.5 **"Apparatus"** means electronic communications apparatus as defined in paragraph 1(1) of Schedule 2 (the Electronic Communications Code) of the Telecommunications Act 1984 (as amended or extended) belonging to, used by or maintained by BT above or below ground and for the avoidance of doubt 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 **"Approvals Body"** 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 Acts;

- 1.1.9 **"C3 proposals"** means any proposed scheme submitted under section C3 of Appendix C to the Code;
- 1.1.10 **"C4 budget estimates"** means detailed estimates provided under section C4 (iii) of Appendix C of the Code;
- 1.1.11 **"C4 scheme"** means a final detailed scheme (without C4 budget estimates) submitted under section C4 (i) and (ii) of Appendix C of the Code;
- 1.1.12 **"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;
- 1.1.13 **"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;
- 1.1.14 **"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;
- 1.1.15 **"Dispute"** means a dispute or difference arising between the parties under this Agreement;
- 1.1.16 **"Dispute Resolution Procedure"** means the procedure set out in clause 9 of this Agreement;
- 1.1.17 **"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 in accordance with the relevant Act;
- 1.1.18 **"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 in accordance with the relevant Act;

- 1.1.19 **"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 **tie** on instruction from CEC;
- 1.1.20 **"Framework Agreement"** means the agreement referred to in clause 5.1 of this Agreement;
- 1.1.21 **"Framework Contractor"** means the utilities diversion contractor to be appointed by **tie** to carry out the Advance Diversion Works;
- 1.1.22 **"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;
- 1.1.23 **"Initial Condition Survey"** means a survey carried out in pursuance of clause 4.5 of this Agreement;
- 1.1.24 **"Limits of Deviation"** means the limits described in the plans lodged with the Bills submitted by **tie** to the Scottish Parliament;
- 1.1.25 **"New Condition Survey"** means a survey carried out under clause 5.6 of this Agreement;
- 1.1.26 **"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;
- 1.1.27 **"Relevant Authority"** means any public body or organisation with responsibilities or involvement with regard to the Edinburgh Tram Network.
- 1.1.28 **"Schedule"** means the relevant schedule in six parts subscribed and attached as relative to this Agreement;

- 1.1.29 **"BT Planned Works"** means replacement, refurbishment, upgrading, repair or monitoring works which may affect the Advance Diversion Works but which are not part of those works and which have been determined by BT pursuant to a pre-existing programme of works 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 more than nine years from the date of this Agreement;
- 1.1.30 **"the Programme"** means the master programme developed by the and provided to BT within 45 days following provision by BT of the information required pursuant to clause 4;
- 1.1.31 **"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;
- 1.1.32 **"Tram Supplier"** means the tram supplier to be procured by the in relation to the supply of trams for the Edinburgh Tram Network;
- 1.1.33 **"Tramway"** has the same meaning as in section 164(1) of the 1991 Act;
- 1.1.34 **"Utilities Diversion Strategy"** means the methodology, resources, procurement and contracts applied by the to optimise the construction productivity during the execution of the Authorised Works and to minimise disruption while reasonably balancing the need to:
- 1.1.34.1 safeguard the interests of BT and other statutory undertakers and utilities named in part 5 of the Schedule in an agreed manner
- against
- 1.1.34.2 the's wish not to compromise design, procurement and delivery of the Edinburgh Tram Network to budget and programme;
- 1.1.35 **"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

1.1.36 "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 other.

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 He shall ensure that the Authorised Undertaker uses 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 BT is fully informed of all material matters concerning the Advance Diversion Works in so far as they affect BT.

- 2.2 Without prejudice to the provisions of clause 9, **he** shall ensure that the Authorised Undertaker uses all reasonable endeavours to co-operate with BT 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, **he** and BT 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 BT shall consult with **he** before installing any apparatus (other than in respect of BT Planned Works) or 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 with each other in the case of BT, subject to any statutory or regulatory obligation, 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 their respective ability to enter into this Agreement, both **he** and BT warrant that they each have full authority under their respective memorandums and articles of association, and have obtained or do not require the consent, authority or licence of any third party and that by entering into this Agreement they will not be or become in breach of any other agreement, arrangement or legal obligation of any nature.
- 2.7 **he** agrees where appropriate that adequate design consideration shall be given to electromagnetic compatibility in line with:
- 2.7.1 European Industry Standard EN50122;
- 2.7.2 Railways Group Standard GI/RT/1253;

2.7.3 Electrical Association's Engineering Technical Report 123; Guidelines for Managing the Interface Between Utility Services and Light Rapid Transport Systems.

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

2.8.1 tie 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 are necessary;

2.8.2 in the event that BT considers on reasonable grounds presented to tie that the Authorised Undertaker has installed inadequate stray current protective measures BT 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 BT (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**"), tie shall or ensure that the Authorised Undertaker shall:

2.8.3.1 pay any such proportion of the cost of 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 BT pursuant to clause 5.5, 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 BT 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.

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 but not absolute objectives in relation to the execution of the Advance Diversion Works and the BT Planned Works. To that end:

3.1.1 BT shall provide **tie** within 60 days of the last date of execution of this Agreement with a current programme of BT Planned Works taking into account that **tie** wishes to ensure execution and completion of the BT Planned Works within eighteen months of the date of Royal Assent for the first Bill to be enacted by the Scottish Parliament and BT undertakes to use reasonable endeavours to execute the BT Planned Works within the timeframe referred to; and

3.1.2 BT shall so far as BT is reasonably able having regard to the nature of the BT Planned Works and BT's statutory and other regulatory obligations, facilitate the implementation of the BT Planned Works, including early or adjusted commencement and implementation so as to complement the Utilities Diversion Strategy and the **tie** Programme.

3.2 For the avoidance of doubt, unless expressly agreed by the parties, the BT Planned 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, BT and **tie** shall work in collaboration with and assist each other 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 a level C4 scheme and that within 42 days' of receiving a request therefor from **the** or such other period as the parties may agree, both parties acting reasonably in this respect. Without prejudice to that generality, on request and reasonable notice by **the**, BT shall:

- 4.1 provide C4 budget estimates in respect of the Advance Diversion Works but only insofar as such C4 budget estimates can be provided without any reference being made to, or engaging with, any third parties, BT being required to identify to **the** any caveats in respect of the C4 budget estimates of which **the** should be made aware as a result of the fact that BT did not go to the open market to assist in the production of such C4 budget estimates;
- 4.2 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;
- 4.3 provide plans showing locations and indicative depths of all buried and above ground Apparatus within the Tram Project Affected Area;
- 4.4 confirm that the Advance Diversion Works do not adversely affect its assets or operations having satisfied itself in relation to the following:
 - 4.4.1 the extent, design, scope and programme of the Authorised Works;
 - 4.4.2 the proposed position of any alternative Apparatus to be provided or constructed with a view to ensuring that BT will be afforded the necessary facilities for the maintenance and renewal of that alternative Apparatus;
 - 4.4.3 BT'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;
 - 4.4.4 that neither the Advance Diversion Works nor any BT Planned Works will result in BT 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;

- 4.5 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**");
- 4.6 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 costs and in particular to identify and recommend appropriate adjustment to any programme of works 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
- 4.7 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 **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 BT hereby agrees to **tie** managing this process and letting the relevant contract subject to:

5.1.1 the Framework Agreement containing, in relation to the Apparatus, the following:

5.1.1.1 BT Specification LM550 (Issue 6);

5.1.1.2 Provisions to the effect that the Framework Contractor warrants that all materials used in respect of Advance Diversion Works relative to the Apparatus will be in conformance with all applicable specifications, drawings and instructions;

5.1.2 **tie** procuring the remedy of all defects in the Advance Diversion Work relative to the Apparatus which arise from faulty or incorrect materials, workmanship or performance standards which are not in accordance with the applicable specifications, drawings and instructions;

- 5.1.3 **tie** procuring a warranty, in respect of the structures of installed jointing chambers, for a period of at least ten years, and installed duct, for a period of at least five years. This warranty shall commence upon completion of the work by the Framework Contractor. This warranty shall not commence until the day that access to the relevant site is made available for BT to utilise the plant following the completion of the Advance Diversion Works;
- 5.1.4 **tie** procuring that all necessary arrangements are made to ensure that any corrective action notified to **tie** by BT is taken without undue delay and within a reasonable timescale to replace the defective materials in respect of any Advance Diversion Works relative to the Apparatus or to commence the necessary remedial work as soon as possible, but in any case within such reasonable time as may be agreed between **tie** and BT;
- 5.1.5 without prejudice to any other right or remedy of BT, if **tie** does not procure the repair or replace the defective materials or attend the relevant site and effect all necessary remedial work to the reasonable satisfaction of BT within such period as may be agreed between BT and **tie**, then BT may perform the work or make arrangements for the work to be performed, and charge the cost of doing so to **tie** provided that such costs and charges are reasonable; and
- 5.1.6 without prejudice to any other right or remedy of BT, where defective work at any time results in additional costs being incurred by BT due to the imposition of charges by any third party, these charges shall be recoverable in full from **tie** provided that such costs and charges are reasonable.
- 5.2 **tie** and CEC shall afford BT 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 BT by virtue of a statutory or other regulatory obligation, or to ensure the reasonable safety, security, future operation and integrity of BT's network, BT hereby agrees:

- 5.3.1 to use reasonable endeavours to execute or to procure the execution of such works and within such timescales as may reasonably be agreed as part of the programme of works; and
- 5.3.2 that the cost of carrying out the works referred to in clause 5.3.1 above shall be stipulated in the C4 budget estimates to be provided by BT under clause 4.
- 5.4 BT shall be entitled to inspect at any time the carrying out of the Advance Diversion Works in respect of the Apparatus upon reasonable notice (at least three business days) to tie.
- 5.5 tie shall agree with Working Party members for inclusion in the Advance Diversion Works detailed specifications multi-utility under track crossings at suitable intervals and at positions which tie and Working Party members consider would safeguard the Edinburgh Tram Network, against the need for BT and others, 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. Access to the track crossings referred to above by BT shall be by prior agreement with the Authorised Undertaker or any party acting on behalf of the Authorised Undertaker.
- 5.6 In the event that BT considers on reasonable grounds presented to tie that the Framework Contractor has compromised or damaged any Apparatus, BT 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 not to have been the responsibility of the Framework Contractor, the cost of the survey and making good the damage to the Apparatus and all reinstatement works shall be to the account of BT. If the New Condition Survey shows damage for which the Framework Contractor is responsible, the cost of the survey, making good the damage and all other proportional additional cost shall be borne by the Authorised Undertaker.
- 5.7 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, BT shall promptly:

- 5.7.1 assist the Framework Contractor in identifying whether BT is the owner of such equipment;
- 5.7.2 attend the relevant site as required by the Framework Contractor for the purpose of clause 5.7.1; and
- 5.7.3 facilitate in the event that the apparatus is the property of BT and not abandoned:
 - 5.7.3.1 obtaining any relevant approvals as may be necessarily required by the Framework Contractor; and
 - 5.7.3.2 the production of any information reasonably required for a variation of the Advance Diversion Works.

6. COSTS, EXPENSES AND FINANCIAL CONTRIBUTIONS

- 6.1 The parties agree that 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 **tie** shall ensure that the Authorised Undertaker shall pay to BT:
 - 6.2.1 the costs, charges and expenses reasonably incurred by BT in connection with the provision of its services under clause 4 in developing the technical specification and scope of the Advance Diversion Works based upon the C4 scheme in respect of the Advance Diversion Works; and
 - 6.2.2 with regard to the BT Planned Works such costs which reasonably represent any additional sum incurred by BT as a result of the performance of BT's obligations under clause 3 of this Agreement.
- 6.3 **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.
- 6.4 In respect of Advance Diversion Works which are being carried out directly by BT in pursuance of clause 5.3 above and which are not "major works" **tie** shall pay to BT in advance of the start of those works a sum representing BT's estimate of the cost of the works and at the conclusion of the works BT shall provide an account to **tie** and

repay any overpayment to **tie** or as the case may be **tie** shall pay any further sums due to BT in each case within 28 days.

- 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. For the avoidance of doubt this Agreement is not an agreement for the purposes of Regulation 8(1)(b) of the 2003 Regulations.

7. LIABILITY

- 7.1 Nothing in this Agreement shall impose any liability on **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 BT, or of any person in their employment, or of their contractors or agents, and any liability of **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 BT or of any person in their employment, or of their contractors or agents.
- 7.2 Nothing in this Agreement shall impose any liability on BT 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 **tie**, or of any person in their employment, or of their contractors or agents, and any liability of BT 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 **tie** or of any person in its employment, or of its contractors or agents.
- 7.3 Notwithstanding clauses 7.1 and 7.2, no party shall have any liability to any other party in relation to Indirect Losses.

8. TRANSFER OF POWERS

- 8.1 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** shall procure a direct covenant from the Transferee in favour of BT 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.

- 8.2 Upon the procuring the direct covenant referred to in clause 8.1 above, he 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.

9. DISPUTE RESOLUTION PROCEDURE

- 9.1 The parties agree that this clause 9 shall have effect for the resolution of any Dispute.
- 9.2 Any Dispute shall, in the first instance, be referred to the Internal Resolution Procedure in accordance with clause 9.10.
- 9.3 The parties shall not 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 including for the avoidance of doubt proceedings for an interdict.
- 9.4 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.
- 9.5 The parties 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.
- 9.6 Subject to the'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 9 are mandatory and binding upon the parties.
- 9.7 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 9.7 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 9.7 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.

9.8 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 9.9, 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 farther. 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 9.8 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.

9.9 Notwithstanding the provisions of clause 9.8 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 party 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

- 9.10 The following procedure is the Internal Resolution Procedure referred to in clause 9.2:
- 9.10.1 in the event of any Dispute arising, the representatives to the parties shall seek to resolve the Dispute at a meeting to be convened within three business days of written notification by any party to the Dispute to the other parties to the Dispute 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 12 of this Agreement;
- 9.10.2 further meetings may follow the meeting referred to in clause 9.10.1, 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 ten business days from Notification, serve, in accordance with the provisions of clause 12 of this Agreement, a written position paper ("**Position Paper**") upon the other party. 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 party.
- 9.10.3 upon such service of the Position Paper by the party initiating or pursuing the Dispute, a representative from each of the parties with sufficient authority to negotiate on that party's behalf ("**the authorised representative**") the chief executive (or equivalent) of the parties (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.
- 9.10.4 in the event that resolution of the Dispute is achieved in accordance with clause 9.10.3, the resolution shall be reduced to writing and, once it is signed by the duly authorised representatives of the parties, shall be binding on the parties.

9.10.5 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.

9.11 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) then the following provisions of this clause 9.11 shall apply:

9.11.1 the authorised representative of the parties (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:

9.11.1.1 mediation in accordance with clauses 9.12 to 9.14; or

9.11.1.2 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 other party or parties (as the case may be) to the Dispute 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

9.11.1.3 litigation before the Court of Session, Scotland, in which event the Summons or Petition in any such litigation shall be signetted and served within ten 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).

9.11.2 In the event that the authorised representative of the parties (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 9.11.1.1 to 9.11.1.3, the party initiating or pursuing the Dispute shall refer the Dispute to mediation (and thereafter adjudication if necessary) in accordance with clause 9.12 to 9.14.

Mediation

- 9.12 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 agreement of the parties, 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 9, the provisions of this clause 9 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 9, the timescales contained in such mediation rules or model mediation procedure shall be amended accordingly such that the timescales referred to in this clause 9 shall be adhered to.
- 9.13 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 9.12 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.
- 9.14 If any Dispute to which this clause 9 relates is not resolved by the mediation procedure referred to in clause 9.12 and 9.13 within a period of 55 business days from Notification (or longer if so agreed by the parties), 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.

10. ASSIGNATION

- 10.1 BT shall not assign, novate or otherwise transfer the whole or any part of the Agreement without the prior written agreement of **tie** (such consent not to be unreasonably withheld or delayed).
- 10.2 **tie** shall be entitled to assign, novate or transfer the whole or any part of this Agreement:
- 10.2.1 to CEC or any other body with no worse financial standing than that of **tie** who, as a result of any change in law, takes over all or substantially all the functions of **tie**; or
 - 10.2.2 to any other person whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to BT) by **tie** or by a person falling within Clause 10.2.1; or
 - 10.2.3 to Transport Edinburgh Limited; or
 - 10.2.4 with the prior written consent of BT (such consent not to be unreasonably withheld or delayed).

11. CONFIDENTIALITY

- 11.1 Each party agrees that, except as permitted by clause 11.2:
- 11.1.1 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 party; and
 - 11.1.2 it shall procure that its respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.
- 11.2 The parties shall be entitled to divulge any Confidential Information without the approval of the other party in the following circumstances:
- 11.2.1 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;

11.2.2 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;

11.2.3 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;

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

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

11.2.6 to the Scottish Executive;

11.2.7 to the Scottish Ministers;

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

11.3 In the event that **tie** receives a request for information under the Freedom Of Information (Scotland) Act 2002 concerning any Confidential Information provided to **tie** by BT in connection with this Agreement, **tie** shall have due regard to the commercial interests of BT and shall notify BT of that request for Confidential Information and permit BT a period of 10 business days prior to the release of such Confidential Information in which to make representations to **tie** regarding the release of such Confidential Information and **tie** agrees to act reasonably in giving due regard to any such representations. Subject to the preceding terms of this clause 11.3, **tie** shall be responsible for determining in its absolute discretion whether the Confidential Information and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom Of Information (Scotland) Act 2002. In no event shall BT respond directly to a request for information (including Confidential Information) received by **tie** under the Freedom Of Information (Scotland) Act 2002.

12. NOTICES AND APPROVALS

- 12.1 Any notice or approval to be given under this Agreement shall be in writing.
- 12.2 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:
- 12.2.1 if delivered by hand, at the time of receipted delivery;
- 12.2.2 if sent by post, five working days after posting.

13. MISCELLANEOUS

- 13.1 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.
- 13.2 Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent.
- 13.3 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.
- 13.4 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.
- 13.5 No amendment to this Agreement shall be effective unless in writing and signed on behalf of the parties.
- 13.6 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*.
- 13.7 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.

13.8 tie shall pay to BT (subject to a maximum aggregate total of £5000 (including VAT)) BT's reasonable legal costs in house as well as external in connection with the negotiation and execution but not enforcement of this Agreement.

14. GOVERNING LAW AND JURISDICTION

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

14.2 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 23 pages and the Schedule attached as relative hereto are executed as follows:

For and on behalf of tie **LIMITED** at Edinburgh
on 7th February 2006 by:

.....
[Redacted Signature]
Authorized Signatory

.....
Full Name (Please print in full)

.....
[Redacted Signature]
Witness

.....
Full Name (Please print in full)

.....
Address

For and on behalf of **BRITISH TELECOMMUNICATIONS PLC** at

London on 25 January 2006 by:

[Redacted Signature]

Director/Authorised Signatory

HEATHER GWYNETH BRICKE
Full Name (Please print in full)

[Redacted Signature]

Director/Witness

JOHN CHRISTOPHER CHALLIS
Full Name (Please print in full)

81 NEWGATE STREET
Address (Witness only)
LONDON EC1A 7AT

This is the Schedule referred to in the preceding Agreement between the Limited and British Telecommunications PLC.

SCHEDULE

PART 1

ADJUDICATION

1. In the event that a party refers a Dispute to adjudication in terms of clause 9.11.1 or 9.14 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 its intention to refer a Dispute to adjudication and the party 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 and the party receiving the Notice of Adjudication shall 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 to the Dispute 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, BT 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 to the Dispute 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 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 the CEC, BT, 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 party 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 to those disputes, 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 to the Dispute.
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 supply him with such documents as he may reasonably require including, if he so directs, any written statement from the other parties 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.
25. The parties shall comply with any request or direction of the adjudicator in relation to the adjudication.
26. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may:

- 26.1 continue the adjudication in the absence of that party or of the document or written statement requested;
 - 26.2 draw such inferences from that failure to comply as may, in the adjudicator's opinion, be justified in the circumstances;
 - 26.3 make a decision on the basis of the information before him, attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed;
 - 26.4 disqualify any part or parts of that party's submissions affected by the failure to comply; and
 - 26.5 grant the other parties proper opportunity to consider and respond to any evidence or representation made late.
27. Subject to any agreement between the parties to the contrary, the other party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
28. The adjudicator shall consider any relevant information submitted to him by the other parties and shall make available to them any information to be taken into account in reaching his decision.
29. The adjudicator and the parties to the Dispute shall not disclose to any other person any information or document provided in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that disclosure is required by law or is necessary for the purposes of, or in connection with, the adjudication, or the information is already in the public domain.

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 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 to the Dispute.
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 or both of the parties 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 to the Dispute 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 9.2, 9.3, 9.6, 9.7, 9.8 and 9.9 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), he 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 he is of the opinion that a Dispute is to be (but has not yet been) referred to adjudication under part 1 of the Schedule, he may refer the Dispute, or may by notice in writing to BI 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 ~~the~~) 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 ~~he~~ shall procure that, as soon as practicable, the other party or parties to the Related Dispute shall give BT 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 ~~he~~ is of the opinion that a Related Dispute is to be (but has not yet been) referred to adjudication, ~~he~~ 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 BT 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
8 Somersby Avenue
Chesterfield
DERBYSHIRE
S42 7LY

Peter Chapman
Somersby House
Stokesheath Road
OXSHOTT
SURREY
KT22 0PS

Tony Canham
The Old School
School Lane
Thorpe St Andrew
NORWICH
NR7 0PE

Guy Cottam
2 Old Track
Upper Limpley Stoke
BATH
BA3 7Y

FINANCIAL

Nigel Lowe
Nigel Lowe Consulting Limited
27 Old Gloucester Street
LONDON
WC1N 3XX

John Hunter
Hunter Consulting
Commercial Centre
Stirling Enterprise Park
STIRLING
FK7 7BF

Bryan Porter
1 Waterfoot Road
Newton Mearns
GLASGOW
G77 5RU

Eric Mouzer
111 Hagley Road
Edgebaston
BIRMINGHAM
B11 8LB

LEGAL

Gordon Reid, QC
Blebo House
By St Andrews
FIFE
KY15 5TZ

Robert Howie, QC
41A Fountainhall Road
EDINBURGH
EH9 2LN

Lord Dervaird (Prof. John Murray, QC)
4 Moray Place
EDINBURGH
EH3 6TS

Gordon Coutts, QC
6 Heriot Row
EDINBURGH
EH3 6HU

Angus Gleanie, QC
Threeburnford
Oxton
Lauder
BERWICKSHIRE
TD2 6PU

PART 3

NOTICES

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

Post Point
6CCE
Telephone House
357 Gorgie Road
Edinburgh
EH11 2RP

All written notices to be marked: "URGENT: ATTENTION REPAYMENTS PROJECT
MANAGER"

2. The address for the service of notices is:

The 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

ALL DRAWINGS SHALL BE MADE TO THE DIMENSIONS SHOWN UNLESS OTHERWISE SPECIFIED. DIMENSIONS SHALL BE TO CENTER UNLESS OTHERWISE SPECIFIED.



PROJECT	BEHNIGHEIM TRAIN LINE TWO
DATE	11/10/20
DESIGNED BY	SCOTT W. HARRIS
CHECKED BY	SCOTT W. HARRIS
SCALE	AS SHOWN
SHEET NO.	11 OF 11

PROJECT: BEHNIGHEIM TRAIN LINE TWO

DATE: 11/10/20

DESIGNED BY: SCOTT W. HARRIS

CHECKED BY: SCOTT W. HARRIS

SCALE: AS SHOWN

SHEET NO.: 11 OF 11

FOR: BEHNIGHEIM TRAIN LINE TWO

BY: SCOTT W. HARRIS

DATE: 11/10/20

PROJECT: BEHNIGHEIM TRAIN LINE TWO

DATE: 11/10/20

DESIGNED BY: SCOTT W. HARRIS

CHECKED BY: SCOTT W. HARRIS

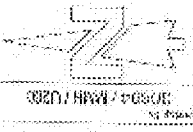
SCALE: AS SHOWN

SHEET NO.: 11 OF 11

PROJECT	BEHNIGHEIM TRAIN LINE TWO
DATE	11/10/20
DESIGNED BY	SCOTT W. HARRIS
CHECKED BY	SCOTT W. HARRIS
SCALE	AS SHOWN
SHEET NO.	11 OF 11
FOR	BEHNIGHEIM TRAIN LINE TWO
BY	SCOTT W. HARRIS
DATE	11/10/20
PROJECT	BEHNIGHEIM TRAIN LINE TWO
DATE	11/10/20
DESIGNED BY	SCOTT W. HARRIS
CHECKED BY	SCOTT W. HARRIS
SCALE	AS SHOWN
SHEET NO.	11 OF 11
FOR	BEHNIGHEIM TRAIN LINE TWO
BY	SCOTT W. HARRIS
DATE	11/10/20

KEY PLAN FOR
SOURBED LOCATIONS FOR
STATIONARY INCURTERS EQUIPMENT

DATE	11/10/20
SCALE	AS SHOWN
SHEET NO.	11 OF 11
FOR	BEHNIGHEIM TRAIN LINE TWO
BY	SCOTT W. HARRIS
DATE	11/10/20



SCOTT W. HARRIS / P0000



CONTINUED

CONTINUED

8. Drawn By: [Name]

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.
 3. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.
 4. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.
 5. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.

Colour Code

[Pattern]	Asphalt Paving
[Pattern]	Gravel Paving
[Pattern]	Concrete Paving
[Pattern]	Other Paving

THIS DRAWING HAS BEEN PREPARED TO GIVE AN INITIAL INDICATION OF THE RELATIVE SPREAD OF ANTICIPATED DIVERSIONARY WORKS ON A COST BASIS. COSTS HAVE BEEN ALLOCATED ON A PRO RATA BASIS ACROSS THE AFFECTED ROUTE SECTIONS.

NO.	DATE	DESCRIPTION	BY
1	10/10/00	ISSUED FOR TENDER	[Name]
2	11/10/00	REVISED	[Name]
3	12/10/00	REVISED	[Name]
4	01/11/01	REVISED	[Name]

FOR DISCUSSION PURPOSES ONLY

PROJECT NAME	PROJECT NO.	SCALE
AS SHOWN	AS SHOWN	AS SHOWN
DATE	DATE	DATE
PREPARED BY	CHECKED BY	DATE
[Name]	[Name]	[Date]



FOR DISCUSSION PURPOSES ONLY



Handwritten signature or initials.

THIS DRAWING IS THE PROPERTY OF THE CONSULTANT AND IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE CONSULTANT. THE CONSULTANT ACCEPTS NO LIABILITY FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY ARISING FROM THE USE OF THIS DRAWING.

PART 5

WORKING PARTY

BT

Scottish Power PLC

Thrus PLC

Scottish Water

Cable and Wireless Public Limited Company

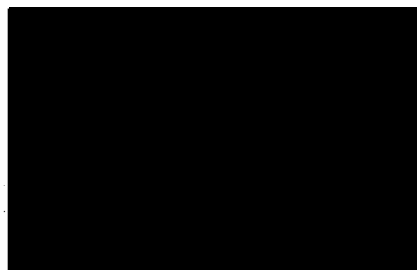
Scotland Gas Networks PLC

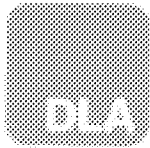
NTL Group Limited

NTL National Networks Limited

Easynet Telecommunications Limited

- 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
- any other works necessary or ancillary to the above or such other accommodation works as may be necessary for the purposes of the Authorised Works.





DLA PIPER RUDNICK
GRAY CARY

Confidential

(1) **the LIMITED**

- and -

(2) **BRITISH TELECOMMUNICATIONS PLC**

AGREEMENT

relating to
works concerning BT equipment and
apparatus in respect of the Edinburgh Tram
Network

CEC01643283_0047

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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) **BRITISH TELECOMMUNICATIONS PLC**, (Company number 1800000) whose registered office is at 81 Newgate Street, London EC1A 7AJ ("**BT**") and its successors or permitted assigns.

WHEREAS

- (A) The City of Edinburgh Council ("**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) As part of the Authorised Works permitted under the Bills, the Authorised Undertaker requires to carry out certain utility diversion works in respect of BT's and other's equipment and apparatus.
- (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 BT Planned Works or the works of other statutory undertakers.
- (E) 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; "Act" shall mean either one of the Acts;
 - 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 all Authorised Works (i) 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, and (iii) are agreed pursuant to clauses and 2.7, 2.8 and 5.5;
 - 1.1.4 "**Agreement**" means this agreement and its Schedule;
 - 1.1.5 "**Apparatus**" means electronic communications apparatus as defined in paragraph 1(1) of Schedule 2 (the Electronic Communications Code) of the Telecommunications Act 1984 (as amended or extended) belonging to, used by or maintained by BT above or below ground and for the avoidance of doubt 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 "**Approvals Body**" 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, or 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 Acts;

- 1.1.9 "**C3 proposals**" means any proposed scheme submitted under section C3 of Appendix C to the Code;
- 1.1.10 "**C4 budget estimates**" means detailed estimates provided under section C4 (iii) of Appendix C of the Code;
- 1.1.11 "**C4 scheme**" means a final detailed scheme (without C4 budget estimates) submitted under section C4 (i) and (ii) of Appendix C of the Code;
- 1.1.12 "**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;
- 1.1.13 "**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;
- 1.1.14 "**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;
- 1.1.15 "**Dispute**" means a dispute or difference arising between the parties under this Agreement;
- 1.1.16 "**Dispute Resolution Procedure**" means the procedure set out in clause 9 of this Agreement;
- 1.1.17 "**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 in accordance with the relevant Act;
- 1.1.18 "**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 in accordance with the relevant Act;

- 1.1.19 **"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 *tie* on instruction from CEC;
- 1.1.20 **"Framework Agreement"** means the agreement referred to in clause 5.1 of this Agreement;
- 1.1.21 **"Framework Contractor"** means the utilities diversion contractor to be appointed by *tie* to carry out the Advance Diversion Works;
- 1.1.22 **"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;
- 1.1.23 **"Initial Condition Survey"** means a survey carried out in pursuance of clause 4.5 of this Agreement;
- 1.1.24 **"Limits of Deviation"** means the limits described in the plans lodged with the Bills submitted by *tie* to the Scottish Parliament;
- 1.1.25 **"New Condition Survey"** means a survey carried out under clause 5.6 of this Agreement;
- 1.1.26 **"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;
- 1.1.27 **"Relevant Authority"** means any public body or organisation with responsibilities or involvement with regard to the Edinburgh Tram Network.
- 1.1.28 **"Schedule"** means the relevant schedule in six parts subscribed and attached as relative to this Agreement;

- 1.1.29 **"BT Planned Works"** means replacement, refurbishment, upgrading, repair or monitoring works which may affect the Advance Diversion Works but which are not part of those works and which have been determined by BT pursuant to a pre-existing programme of works 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 more than nine years from the date of this Agreement;
- 1.1.30 **"the Programme"** means the master programme developed by **tie** and provided to BT within 45 days following provision by BT of the information required pursuant to clause 4;
- 1.1.31 **"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;
- 1.1.32 **"Tram Supplier"** means the tram supplier to be procured by **tie** in relation to the supply of trams for the Edinburgh Tram Network;
- 1.1.33 **"Tramway"** has the same meaning as in section 164(1) of the 1991 Act;
- 1.1.34 **"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 reasonably balancing the need to:
- 1.1.34.1 safeguard the interests of BT and other statutory undertakers and utilities named in part 5 of the Schedule in an agreed manner
- against
- 1.1.34.2 **tie's** wish not to compromise design, procurement and delivery of the Edinburgh Tram Network to budget and programme;
- 1.1.35 **"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

1.1.36 "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 other.
- 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 He shall ensure that the Authorised Undertaker uses 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 BT is fully informed of all material matters concerning the Advance Diversion Works in so far as they affect BT.

- 2.2 Without prejudice to the provisions of clause 9, **tie** shall ensure that the Authorised Undertaker uses all reasonable endeavours to co-operate with BT 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** and BT 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 BT shall consult with **tie** before installing any apparatus (other than in respect of BT Planned Works) or 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 with each other in the case of BT, subject to any statutory or regulatory obligation, 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 their respective ability to enter into this Agreement, both **tie** and BT warrant that they each have full authority under their respective memorandum and articles of association, and have obtained or do not require the consent, authority or licence of any third party and that by entering into this Agreement they will not be or become in breach of any other agreement, arrangement or legal obligation of any nature.
- 2.7 **tie** agrees where appropriate that adequate design consideration shall be given to electromagnetic compatibility in line with:
- 2.7.1 European Industry Standard EN50122;
- 2.7.2 Railways Group Standard GL/RT/1253;

- 2.7.3 Electrical Association's Engineering Technical Report 123: Guidelines for Managing the Interface Between Utility Services and Light Rapid Transport Systems.
- 2.8 With regard to stray current which is reasonably assessed as emanating from the Edinburgh Tram Network:
- 2.8.1 **tie** 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 are necessary;
- 2.8.2 in the event that **BT** considers on reasonable grounds presented to **tie** that the Authorised Undertaker has installed inadequate stray current protective measures **BT** 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 **BT** (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**"), **tie** shall or ensure that the Authorised Undertaker shall:
- 2.8.3.1 pay any such proportion of the cost of 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 BT pursuant to clause 5.5, 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 He and BT 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.

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 but not absolute objectives in relation to the execution of the Advance Diversion Works and the BT Planned Works. To that end:

3.1.1 BT shall provide He within 60 days of the last date of execution of this Agreement with a current programme of BT Planned Works taking into account that He wishes to ensure execution and completion of the BT Planned Works within eighteen months of the date of Royal Assent for the first Bill to be enacted by the Scottish Parliament and BT undertakes to use reasonable endeavours to execute the BT Planned Works within the timeframe referred to; and

3.1.2 BT shall so far as BT is reasonably able having regard to the nature of the BT Planned Works and BT's statutory and other regulatory obligations, facilitate the implementation of the BT Planned Works, including early or adjusted commencement and implementation so as to complement the Utilities Diversion Strategy and the He Programme.

- 3.2 For the avoidance of doubt, unless expressly agreed by the parties, the BT Planned 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, BT and He shall work in collaboration with and assist each other 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 a level C4 scheme and that within 42 days' of receiving a request therefor from **tie** or such other period as the parties may agree, both parties acting reasonably in this respect. Without prejudice to that generality, on request and reasonable notice by **tie**, BT shall:

- 4.1 provide C4 budget estimates in respect of the Advance Diversion Works but only insofar as such C4 budget estimates can be provided without any reference being made to, or engaging with, any third parties, BT being required to identify to **tie** any caveats in respect of the C4 budget estimates of which **tie** should be made aware as a result of the fact that BT did not go to the open market to assist in the production of such C4 budget estimates;
- 4.2 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;
- 4.3 provide plans showing locations and indicative depths of all buried and above ground Apparatus within the Tram Project Affected Area;
- 4.4 confirm that the Advance Diversion Works do not adversely affect its assets or operations having satisfied itself in relation to the following:
 - 4.4.1 the extent, design, scope and programme of the Authorised Works;
 - 4.4.2 the proposed position of any alternative Apparatus to be provided or constructed with a view to ensuring that BT will be afforded the necessary facilities for the maintenance and renewal of that alternative Apparatus;
 - 4.4.3 BT'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;
 - 4.4.4 that neither the Advance Diversion Works nor any BT Planned Works will result in BT 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;

- 4.5 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**");
- 4.6 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 costs and in particular to identify and recommend appropriate adjustment to any programme of works 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
- 4.7 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 **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 BT hereby agrees to **tie** managing this process and letting the relevant contract subject to:
 - 5.1.1 the Framework Agreement containing, in relation to the Apparatus, the following:
 - 5.1.1.1 BT Specification LM550 (Issue 6);
 - 5.1.1.2 Provisions to the effect that the Framework Contractor warrants that all materials used in respect of Advance Diversion Works relative to the Apparatus will be in conformance with all applicable specifications, drawings and instructions;
 - 5.1.2 **tie** procuring the remedy of all defects in the Advance Diversion Work relative to the Apparatus which arise from faulty or incorrect materials, workmanship or performance standards which are not in accordance with the applicable specifications, drawings and instructions;

- 5.1.3 **tie** procuring a warranty, in respect of the structures of installed jointing chambers, for a period of at least ten years, and installed duct, for a period of at least five years. This warranty shall commence upon completion of the work by the Framework Contractor. This warranty shall not commence until the day that access to the relevant site is made available for BT to utilise the plant following the completion of the Advance Diversion Works;
- 5.1.4 **tie** procuring that all necessary arrangements are made to ensure that any corrective action notified to **tie** by BT is taken without undue delay and within a reasonable timescale to replace the defective materials in respect of any Advance Diversion Works relative to the Apparatus or to commence the necessary remedial work as soon as possible, but in any case within such reasonable time as may be agreed between **tie** and BT;
- 5.1.5 without prejudice to any other right or remedy of BT, if **tie** does not procure the repair or replace the defective materials or attend the relevant site and effect all necessary remedial work to the reasonable satisfaction of BT within such period as may be agreed between BT and **tie**, then BT may perform the work or make arrangements for the work to be performed, and charge the cost of doing so to **tie** provided that such costs and charges are reasonable; and
- 5.1.6 without prejudice to any other right or remedy of BT, where defective work at any time results in additional costs being incurred by BT due to the imposition of charges by any third party, these charges shall be recoverable in full from **tie** provided that such costs and charges are reasonable.
- 5.2 **tie** and CEC shall afford BT 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 BT by virtue of a statutory or other regulatory obligation, or to ensure the reasonable safety, security, future operation and integrity of BT's network, BT hereby agrees:

- 5.3.1 to use reasonable endeavours to execute or to procure the execution of such works and within such timescales as may reasonably be agreed as part of the programme of works; and
- 5.3.2 that the cost of carrying out the works referred to in clause 5.3.1 above shall be stipulated in the C4 budget estimates to be provided by BT under clause 4.
- 5.4 BT shall be entitled to inspect at any time the carrying out of the Advance Diversion Works in respect of the Apparatus upon reasonable notice (at least three business days) to tie.
- 5.5 tie shall agree with Working Party members for inclusion in the Advance Diversion Works detailed specifications multi-utility under track crossings at suitable intervals and at positions which tie and Working Party members consider would safeguard the Edinburgh Tram Network, against the need for BT and others, 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. Access to the track crossings referred to above by BT shall be by prior agreement with the Authorised Undertaker or any party acting on behalf of the Authorised Undertaker.
- 5.6 In the event that BT considers on reasonable grounds presented to tie that the Framework Contractor has compromised or damaged any Apparatus, BT 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 not to have been the responsibility of the Framework Contractor, the cost of the survey and making good the damage to the Apparatus and all reinstatement works shall be to the account of BT. If the New Condition Survey shows damage for which the Framework Contractor is responsible, the cost of the survey, making good the damage and all other proportional additional cost shall be borne by the Authorised Undertaker.
- 5.7 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, BT shall promptly:

- 5.7.1 assist the Framework Contractor in identifying whether BT is the owner of such equipment;
- 5.7.2 attend the relevant site as required by the Framework Contractor for the purpose of clause 5.7.1; and
- 5.7.3 facilitate in the event that the apparatus is the property of BT and not abandoned:
 - 5.7.3.1 obtaining any relevant approvals as may be necessarily required by the Framework Contractor; and
 - 5.7.3.2 the production of any information reasonably required for a variation of the Advance Diversion Works.

6. COSTS, EXPENSES AND FINANCIAL CONTRIBUTIONS

- 6.1 The parties agree that 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 tie shall ensure that the Authorised Undertaker shall pay to BT:
 - 6.2.1 the costs, charges and expenses reasonably incurred by BT in connection with the provision of its services under clause 4 in developing the technical specification and scope of the Advance Diversion Works based upon the C4 scheme in respect of the Advance Diversion Works; and
 - 6.2.2 with regard to the BT Planned Works such costs which reasonably represent any additional sum incurred by BT as a result of the performance of BT's obligations under clause 3 of this Agreement.
- 6.3 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.
- 6.4 In respect of Advance Diversion Works which are being carried out directly by BT in pursuance of clause 5.3 above and which are not "major works" tie shall pay to BT in advance of the start of those works a sum representing BT's estimate of the cost of the works and at the conclusion of the works BT shall provide an account to tie and

repay any overpayment to **tie** or as the case may be **tie** shall pay any further sum due to BT in each case within 28 days.

- 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. For the avoidance of doubt this Agreement is not an agreement for the purposes of Regulation 8(1)(b) of the 2003 Regulations.

7. LIABILITY

- 7.1 Nothing in this Agreement shall impose any liability on **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 BT, or of any person in their employment, or of their contractors or agents, and any liability of **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 BT or of any person in their employment, or of their contractors or agents.
- 7.2 Nothing in this Agreement shall impose any liability on BT 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 **tie**, or of any person in their employment, or of their contractors or agents, and any liability of BT 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 **tie** or of any person in its employment, or of its contractors or agents.
- 7.3 Notwithstanding clauses 7.1 and 7.2, no party shall have any liability to any other party in relation to Indirect Losses.

8. TRANSFER OF POWERS

- 8.1 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** shall procure a direct covenant from the Transferee in favour of BT 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.

- 8.2 Upon **tie** procuring the direct covenant referred to in clause 8.1 above, **tie** 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.

9. DISPUTE RESOLUTION PROCEDURE

- 9.1 The parties agree that this clause 9 shall have effect for the resolution of any Dispute.
- 9.2 Any Dispute shall, in the first instance, be referred to the Internal Resolution Procedure in accordance with clause 9.10.
- 9.3 The parties shall not 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 including for the avoidance of doubt proceedings for an interdict.
- 9.4 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.
- 9.5 The parties 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.
- 9.6 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 9 are mandatory and binding upon the parties.
- 9.7 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 9.7 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 9.7 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.

9.8 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 9.9, 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 9.8 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.

9.9 Notwithstanding the provisions of clause 9.8 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 party 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

- 9.10 The following procedure is the Internal Resolution Procedure referred to in clause 9.2;
- 9.10.1 in the event of any Dispute arising, the representatives to the parties shall seek to resolve the Dispute at a meeting to be convened within three business days of written notification by any party to the Dispute to the other parties to the Dispute 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 12 of this Agreement;
- 9.10.2 further meetings may follow the meeting referred to in clause 9.10.1, 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 ten business days from Notification, serve, in accordance with the provisions of clause 12 of this Agreement, a written position paper ("**Position Paper**") upon the other party. 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 party.
- 9.10.3 upon such service of the Position Paper by the party initiating or pursuing the Dispute, a representative from each of the parties with sufficient authority to negotiate on that party's behalf ("**the authorised representative**") the chief executive (or equivalent) of the parties (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.
- 9.10.4 in the event that resolution of the Dispute is achieved in accordance with clause 9.10.3, the resolution shall be reduced to writing and, once it is signed by the duly authorised representatives of the parties, shall be binding on the parties.

9.10.5 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.

9.11 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) then the following provisions of this clause 9.11 shall apply:

9.11.1 the authorised representative of the parties (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:

9.11.1.1 mediation in accordance with clauses 9.12 to 9.14; or

9.11.1.2 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 other party or parties (as the case may be) to the Dispute 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

9.11.1.3 litigation before the Court of Session, Scotland, in which event the Summons or Petition in any such litigation shall be signetted and served within ten 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).

9.11.2 In the event that the authorised representative of the parties (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 9.11.1.1 to 9.11.1.3, the party initiating or pursuing the Dispute shall refer the Dispute to mediation (and thereafter adjudication if necessary) in accordance with clause 9.12 to 9.14.

Mediation

- 9.12 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 agreement of the parties, 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 9, the provisions of this clause 9 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 9, the timescales contained in such mediation rules or model mediation procedure shall be amended accordingly such that the timescales referred to in this clause 9 shall be adhered to.
- 9.13 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 9.12 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.
- 9.14 If any Dispute to which this clause 9 relates is not resolved by the mediation procedure referred to in clause 9.12 and 9.13 within a period of 55 business days from Notification (or longer if so agreed by the parties), 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.

10. ASSIGNATION

- 10.1 BT shall not assign, novate or otherwise transfer the whole or any part of the Agreement without the prior written agreement of **tie** (such consent not to be unreasonably withheld or delayed).
- 10.2 **tie** shall be entitled to assign, novate or transfer the whole or any part of this Agreement:
- 10.2.1 to CEC or any other body with no worse financial standing than that of **tie** who, as a result of any change in law, takes over all or substantially all the functions of **tie**; or
 - 10.2.2 to any other person whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to BT) by **tie** or by a person falling within Clause 10.2.1; or
 - 10.2.3 to Transport Edinburgh Limited; or
 - 10.2.4 with the prior written consent of BT (such consent not to be unreasonably withheld or delayed).

11. CONFIDENTIALITY

- 11.1 Each party agrees that, except as permitted by clause 11.2:
- 11.1.1 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 party; and
 - 11.1.2 it shall procure that its respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.
- 11.2 The parties shall be entitled to divulge any Confidential Information without the approval of the other party in the following circumstances:
- 11.2.1 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;
- 11.2.2 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;
- 11.2.3 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;
- 11.2.4 to the extent that it has been become available to the public other than as a result of any breach of an obligation of confidence;
- 11.2.5 pursuant to the order of any court or tribunal of competent jurisdiction;
- 11.2.6 to the Scottish Executive;
- 11.2.7 to the Scottish Ministers;
- 11.2.8 to the extent required by any legislation including the provisions of the Freedom Of Information (Scotland) Act 2002.
- 11.3 In the event that **tie** receives a request for information under the Freedom Of Information (Scotland) Act 2002 concerning any Confidential Information provided to **tie** by BT in connection with this Agreement, **tie** shall have due regard to the commercial interests of BT and shall notify BT of that request for Confidential Information and permit BT a period of 10 business days prior to the release of such Confidential Information in which to make representations to **tie** regarding the release of such Confidential Information and **tie** agrees to act reasonably in giving due regard to any such representations. Subject to the preceding terms of this clause 11.3, **tie** shall be responsible for determining in its absolute discretion whether the Confidential Information and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom Of Information (Scotland) Act 2002. In no event shall BT respond directly to a request for information (including Confidential Information) received by **tie** under the Freedom Of Information (Scotland) Act 2002.

12. NOTICES AND APPROVALS

- 12.1 Any notice or approval to be given under this Agreement shall be in writing.
- 12.2 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:
- 12.2.1 if delivered by hand, at the time of receipted delivery;
- 12.2.2 if sent by post, five working days after posting.

13. MISCELLANEOUS

- 13.1 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.
- 13.2 Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent.
- 13.3 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.
- 13.4 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.
- 13.5 No amendment to this Agreement shall be effective unless in writing and signed on behalf of the parties.
- 13.6 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*.
- 13.7 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.

13.8 He shall pay to BT (subject to a maximum aggregate total of £5000 (including VAT)) BT's reasonable legal costs in house as well as external in connection with the negotiation and execution but not enforcement of this Agreement.

14. GOVERNING LAW AND JURISDICTION

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

14.2 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 23 pages and the Schedule attached as relative hereto are executed as follows:

For and on behalf of the LIMITED at Edinburgh
on 7th February 2006 by:

.....
Authorized Signatory

Mark Williams
.....
Full Name (Please print in full)

.....
Witness

Stewart McQuinn
.....
Full Name (Please print in full)

King's Church Road
.....
Address

Edinburgh
.....
EH12 6DZ
.....

For and on behalf of **BRITISH TELECOMMUNICATIONS PLC** at
LONDON on 25 January
2006 by:



Director/Authorised Signatory

HEATHER GWYNETH BRIGLEY
Full Name (Please print in full)



Director/Witness

JOHN CHRISTOPHER CHALLIS
Full Name (Please print in full)

81 NEWGATE STREET
Address (Witness only)

LONDON EC1A 7AJ

This is the Schedule referred to in the preceding Agreement between the Limited and British Telecommunications PLC.

SCHEDULE

PART 1

ADJUDICATION

1. In the event that a party refers a Dispute to adjudication in terms of clause 9.11.1 or 9.14 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 its intention to refer a Dispute to adjudication and the party 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 and the party receiving the Notice of Adjudication shall 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 to the Dispute 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, BT 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 to the Dispute 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 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 the CEC, BT, 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 party 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 to those disputes, 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 to the Dispute.
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 supply him with such documents as he may reasonably require including, if he so directs, any written statement from the other parties 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.
25. The parties shall comply with any request or direction of the adjudicator in relation to the adjudication.
26. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may:

- 26.1 continue the adjudication in the absence of that party or of the document or written statement requested;
 - 26.2 draw such inferences from that failure to comply as may, in the adjudicator's opinion, be justified in the circumstances;
 - 26.3 make a decision on the basis of the information before him, attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed;
 - 26.4 disqualify any part or parts of that party's submissions affected by the failure to comply; and
 - 26.5 grant the other parties proper opportunity to consider and respond to any evidence or representation made late.
27. Subject to any agreement between the parties to the contrary, the other party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
28. The adjudicator shall consider any relevant information submitted to him by the other parties and shall make available to them any information to be taken into account in reaching his decision.
29. The adjudicator and the parties to the Dispute shall not disclose to any other person any information or document provided in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that disclosure is required by law or is necessary for the purposes of, or in connection with, the adjudication, or the information is already in the public domain.

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 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 to the Dispute.
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 or both of the parties 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 to the Dispute 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 9.2, 9.3, 9.6, 9.7, 9.8 and 9.9 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), he 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 he is of the opinion that a Dispute is to be (but has not yet been) referred to adjudication under part 1 of the Schedule, he may refer the Dispute, or may by notice in writing to BF 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 **the**) 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 **the** shall procure that, as soon as practicable, the other party or parties to the Related Dispute shall give BT 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 **the** is of the opinion that a Related Dispute is to be (but has not yet been) referred to adjudication, **the** 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 BT 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
8 Somersby Avenue
Chesterfield
DERBYSHIRE
S42 7LY

Peter Chapman
Somersby House
Stokesheath Road
OXSHOTT
SURREY
KT22 0PS

Tony Canham
The Old School
School Lane
Thorpe St Andrew
NORWICH
NR7 0PE

Gry Cottam
2 Old Track
Upper Limpley Stoke
BATH
BA3 WY

FINANCIAL

Nigel Lowe
Nigel Lowe Consulting Limited
27 Old Gloucester Street
LONDON
WC1N 3XX

John Hunter
Hunter Consulting
Commercial Centre
Stirling Enterprise Park
STIRLING
FK7 7BF

Bryan Porter
1 Waterfoot Road
Newton Mearns
GLASGOW
G77 5RU

Eric Mouzer
111 Hagley Road
Edgebaston
BIRMINGHAM
B11 8LB

LEGAL

Gordon Reid, QC
Bleho House
By St Andrews
FIFE
KY15 5TZ

Robert Howie, QC
41A Fountainhall Road
EDINBURGH
EH9 2LN

Lord Dervaird (Prof. John Murray, QC)
4 Moray Place
EDINBURGH
EH3 6TS

Gordon Conlts, QC
6 Heriot Row
EDINBURGH
EH3 6HU

Angus Glennie, QC
Threburnford
Oxton
Lauder
BERWICKSHIRE
TD2 6PU

PART 3
NOTICES

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

Post Point
6CTE
Telephone House
357 Gorgie Road
Edinburgh
EH11 2RP

All written notices to be marked: "URGENT: ATTENTION REPAYMENTS PROJECT
MANAGER"

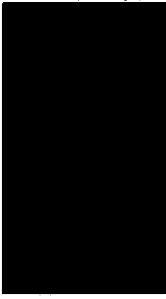
2. tie's address for the service of notices is:

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



Information on this drawing is to be used for
 construction purposes only. It is not to be
 used for any other purpose without the
 written consent of the Engineer.

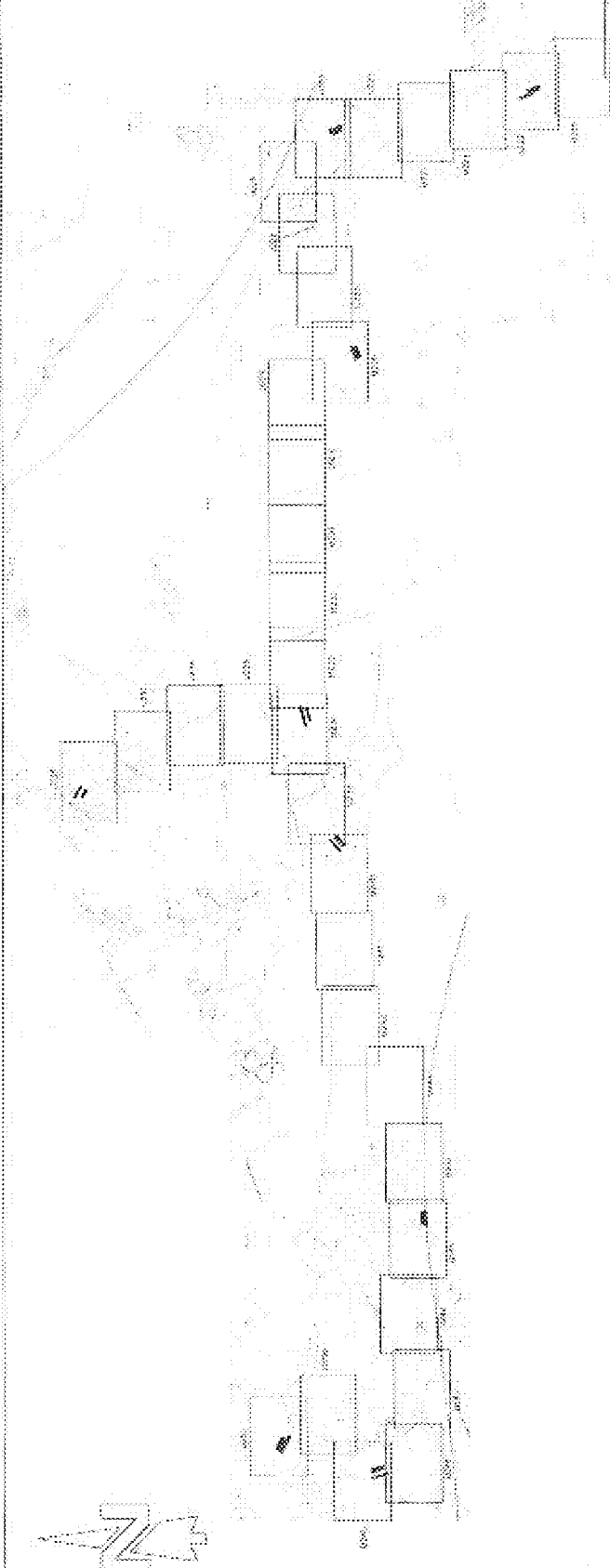
Project No.	102-1000-0000
Sheet No.	102-1000-0000
Sheet Title	Stationary Underpasses
Scale	As Shown
Date	10/20/00

EDINBURGH TRAM
 LINE TWO

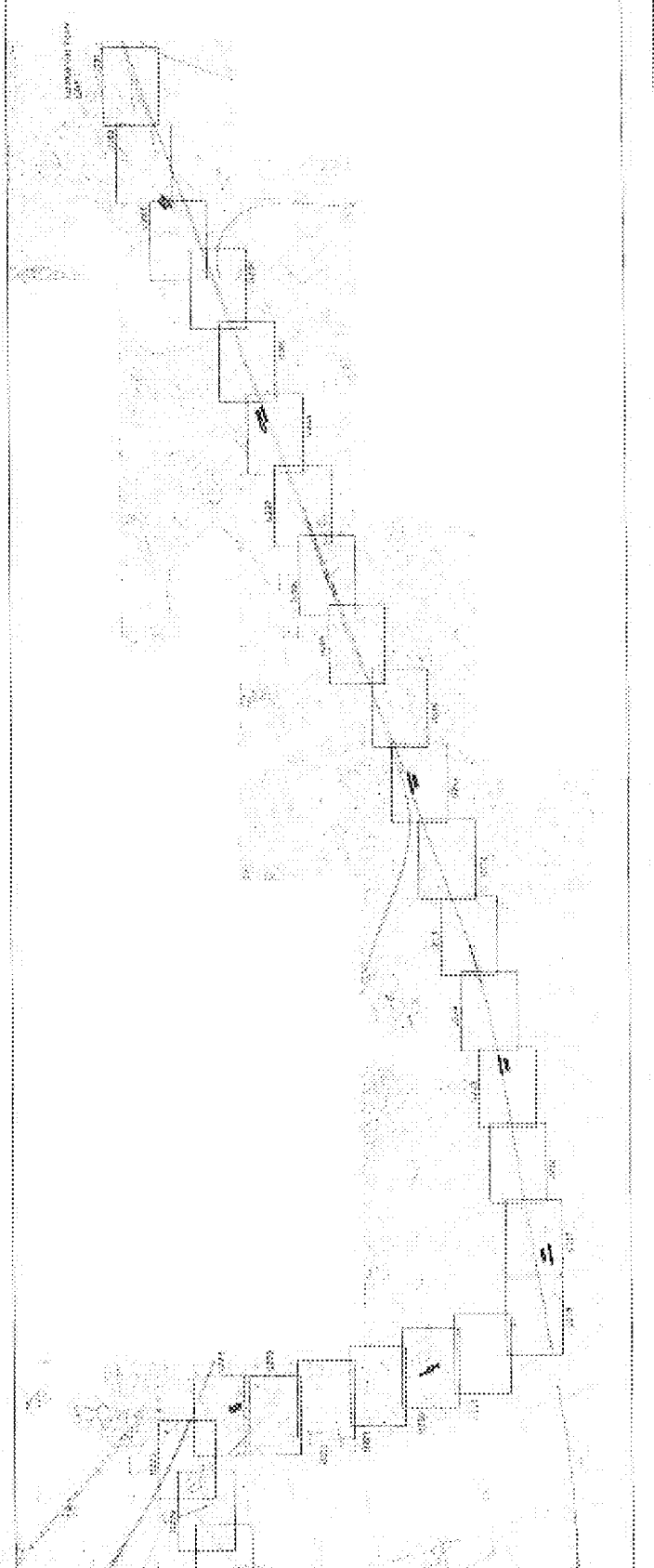
Project No.	102-1000-0000
Sheet No.	102-1000-0000
Sheet Title	Stationary Underpasses
Scale	As Shown
Date	10/20/00

KEY PLAN FOR
 CORNERED JOINT PLAN FOR
 STATIONARY UNDERPASSES

Project No.	102-1000-0000
Sheet No.	102-1000-0000
Sheet Title	Stationary Underpasses
Scale	As Shown
Date	10/20/00



CONT. ABOVE



Edwards Engineering

10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
 (714) 641-1111 FAX (714) 641-1112
 10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
 (714) 641-1111 FAX (714) 641-1112
 10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
 (714) 641-1111 FAX (714) 641-1112

Colour Code

Approach driveway
 works cost estimate
 on a pro-rata basis

100.00% 100.00%

50.00% 50.00%

25.00% 25.00%

12.50% 12.50%

THIS DRAWING HAS BEEN
 PREPARED TO GIVE AN
 INITIAL INDICATION OF THE
 RELATIVE SPREAD OF
 ANTICIPATED DIVERSIONARY
 WORKS ON A COST BASIS.
 COSTS HAVE BEEN
 ALLOCATED ON A PER
 RATA BASIS ACROSS THE
 AFFECTED ROUTE SECTIONS.

PROJECT #	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
DATE	10/15/2010
BY	EDWARDS ENGINEERING
SCALE	AS SHOWN
PROJECT NAME	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT NUMBER	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT LOCATION	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT DESCRIPTION	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT STATUS	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT CONTACT	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT PHONE	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT FAX	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT E-MAIL	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
PROJECT WEBSITE	10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345
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FOR DISCUSSION
 PURPOSES ONLY

McKenzie

10/15/2010

10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345

10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345

10000 S. GARDEN AVENUE, SUITE 200, GARDEN CITY, CALIFORNIA 92345

PART 5

WORKING PARTY

BT

Scottish Power PLC

Thus PLC

Scottish Water

Cable and Wireless Public Limited Company

Scotland Gas Networks PLC

NTL Group Limited

NIL National Networks Limited

Easynet Telecommunications Limited

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

- 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
- any other works necessary or ancillary to the above or such other accommodation works as may be necessary for the purposes of the Authorised Works.

