

**KEY TENETS AND DELIVERABLES IN THE DEVELOPMENT PARTNERING
AND OPERATING FRANCHISE AGREEMENT ("DPOF AGREEMENT")**

20 JUNE 2006

Notes

1. The defined terms used in this Note are in Schedule 1 to the DPOF Agreement.
2. DPOFA was structured to provide **tie** with considerable flexibility and protection/rights as regards termination, system scope and payment obligations.

Topic	Key tenets and deliverables
<i>Parties, Term, Effective Dates and Phased Introduction of the Lines</i>	
<i>Parties to the DPOFA</i>	tie and TETL.
<i>Term</i>	<p>15 year contract term (about 9/10 years of operating if construction is completed in 2009) with option to tie to extend for up to 5 years.</p> <p>4 Project Phases:</p> <p>Phase A - Development; Phase B - Infrastructure and Vehicle Procurement; Phase C1 - Construction/Implementation; Phase C2 - Mobilisation and Testing/Commissioning; Phase D - Operations.</p> <p>During Project Phases A, B, C1 and C2, TETL is consulting tie. During Project Phase D, TETL is the Operator.</p> <p>Project Phase Completion Notices (PPCNs) are issued at the end of Project Phases A, B and C1 to allow the Operator to progress to the next Project Phase.</p>
<i>Effective Date</i>	<p>The DPOF Agreement and Part 1 of the Operating Appendix come into effect on the last date of execution of the DPOF Agreement.</p> <p>The Operating Appendix (Phase D) comes into effect on the satisfaction of various conditions precedent by the Operator.</p>
<i>Project Partnering Approach</i>	The DPOF Agreement embodies partnering principles: working in mutual cooperation, pricing on an open book basis, avoiding unnecessary complaints, disputes and claims, not interfering with the other Party's rights or the performance of the other Party's obligations under the DPOF Agreement, and mitigating losses and liabilities.
<i>Management of the Project</i>	A joint team will be the forum for partnering, liaison, co-operation and co-ordination. The Project will be managed on a day-to-day basis by the tie Project Manager and the Operator shall appoint the counterpart Operator Project Manager.

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<i>Project Development Services</i>	<p>The Operator provides the Project Development Services during Project Phases A, B, C1 and C2. These Services are to be provided in accordance with various standards including:</p> <ul style="list-style-type: none"> • Good Industry Practice and Law; • so as not to wilfully detract from the image and reputation of tie, CEC or the Project; • in a manner not likely to be injurious to persons or property; • the Project Development Objectives; and • the Programme.
<i>Quality Assurance</i>	<p>During all Phases, the Operator is obliged to have a quality management system in place, overseen by a Quality Manager.</p>
<i>Standards of the Transport Services and Project Operations</i>	<p>The Operator is required to provide the Transport Services and the Project Operations in accordance with various standards set out in the DPOF Agreement, including:</p> <ul style="list-style-type: none"> • the Operating Method Statements; • Good Industry Practice; • so as not to detract from the image and reputation of CEC or tie; • all applicable Law and Necessary Consents; and • the Environmental Statement.
<i>Service Performance and Quality Monitoring</i>	<p>The Operator is required to comply with the provisions of the KPI Regime and the Performance Monitoring Regime, monthly performance review meetings, Service Quality Reports and Deductions.</p>
<i>System Timetable</i>	<p>The Timetable will be agreed 60 days prior to the Planned Service Commencement Date. Amendments only with tie's prior written consent.</p>
<i>Special Events</i>	<p>Detailed provisions cover the organisation of Project Operations to accommodate Special Events (e.g. Hogmanay).</p>
<i>Fare Setting and Participation in Integrated Ticketing Scheme</i>	<p>The fares structure for the trams will be set in accordance with the CEC Fares Policy. The Operator may comment on amendments to the CEC Fares Policy.</p> <p>The Operator is obliged to implement its Service Integration Plan in relation to an integrated ticketing scheme and in the Concessionary Travel Scheme.</p>
<i>Edinburgh Tram Network Integration</i>	<p>The Operator has responsibility for maintaining and implementing its System Integration Plan and its Service Integration Plan. The Service Integration Plan will include arrangements with other local transport providers.</p>

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<i>Maintenance</i>	The Operator is responsible for light maintenance. Obligation to work together with Infraco to deal with the impact of maintenance on the provision of the Transport Services.
<i>Best Value and Benchmarking</i>	The Operator to secure continuous improvement in the performance of the Project Operations.
<i>Payment during Project Phases A, B and C1</i>	<p>Payment from tie to the Operator made in respect of the Operator's Core Team (which is a Capped Fee) and in respect of any additional services required from the Operator's Non-Core Staff (at agreed fixed rates). The Services required and the budget for those Services agreed on a quarterly basis. Unless agreed by tie, no payment made by tie in excess of the agreed budget.</p> <p>Within 5 Business Days of certification, the Operator required to issue an invoice for 75% of the certified costs - 25% retention.</p> <p>When the final payment is due and a PPCN issued, the Operator is to issue an invoice to tie for 100% of the retained sums.</p> <p>Fees payable during Project Phases A, B and C1 capped. If the cap is breached because of a delay (not due to the Operator), a budget for further services from the Operator agreed if required by tie.</p> <p>The Parties may agree to suspend provision of the Project Development Services for any period up to a maximum of 12 months.</p>
<i>Payment during Project Phase C2</i>	<p>Target Costs payment regime and applications for payment made by the Operator no later than 7 days after the end of each month. These applications will state the actual costs and the Profit Element (agreed in advance and calculated as a % of Target Costs. Certification of the amount claimed will be subject to a budget agreed by the Operator and tie at the beginning of each month.</p> <p>Payments during Project Phase C2 also be subject to a 25% retention.</p> <p>tie only certifies actual costs above the level of the agreed Target Costs to a level of 20% of these actual costs with a cap at 10% of the agreed Target Costs. Operator entitled to a share of 50% of any saving against Target Costs.</p>
<i>Amendments</i>	<p>The Base Case Assumptions are a set of financial assumptions prepared by the Operator.</p> <p>During Project Phases A and B, amendments may be agreed by tie and the Operator to these agreed Base Case Assumptions to reflect Changes in Law and/or these Base Case Assumptions becoming Inappropriate Base Case Assumptions.</p> <p>Amendments during Project Phases C and/or D dealt with as change.</p>

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<i>Payment during Project Phase D</i>	<p>Applications for payment will be made in arrears by the Operator for the budgeted Target Operating Costs and the Profit Element for the Reporting Period and following submission of a Service Quality Report to tie. There are 13 Reporting Periods in each year.</p> <p>Each application for payment will include any performance deductions calculated by the Operator in accordance with the KPI Regime.</p> <p>Detailed provisions of the operation of the KPI Regime to be further developed after appointment of the Operator but contains all headline KPIs.</p>												
	<p>Aggregated deductions of 30% or more during any Reporting Period result in a Major KPI Breach Notice requesting the Operator to deliver a KPI Rectification Plan setting out detailed measures to remedy the matters specified by tie in the Notice. Unless cured this process continues on an increasing deduction basis, and if a second Major KPI Breach Notice is served, this will be considered to be an Operator Default.</p> <p>DPOFA contains a "pain/gain" share mechanism to share the excess/deficit of actual Operating Costs and actual Operating Revenues.</p> <table border="0" data-bbox="564 1053 1310 1230"> <tr> <td>Excess Target Revenues</td> <td>70% tie</td> <td>30% Operator</td> </tr> <tr> <td>Deficit Target Revenues</td> <td>70% tie</td> <td>30% Operator</td> </tr> <tr> <td>Excess Target Operating Costs</td> <td>50% tie</td> <td>50% Operator</td> </tr> <tr> <td>Deficit Target Operating Costs</td> <td>20% tie</td> <td>80% Operator</td> </tr> </table> <p>The Vision Achievement Incentive recognises sustained (three year) performance.</p>	Excess Target Revenues	70% tie	30% Operator	Deficit Target Revenues	70% tie	30% Operator	Excess Target Operating Costs	50% tie	50% Operator	Deficit Target Operating Costs	20% tie	80% Operator
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<i>Cost and Revenue Adjustment</i>	<p>The Target Operating Costs and Target Revenue may only be adjusted in limited circumstances:</p> <ul style="list-style-type: none"> • Qualifying Changes in Law; • Permanent Roads Changes; • Long Term Roads Changes; • tie Change or Operator Change; and • Reset. <p>Joint Revenue Committee sets the Target Revenue during Project Phase B.</p> <p>TETL is entitled to nominate a revenue consultant to join the Joint Revenue Committee. Parties are not entitled to raise a Dispute with regard to the agreed JRC estimates of revenue.</p>												

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<i>Reset</i>	<p>"Reset" occurs every 3 years during Project Phase D: a review of the operating costs, revenues, performance by the Operator, customer satisfaction surveys, Annual Service Report and Best Value Improvement Plans.</p> <p>Following review, the Parties may agree to revise the Payment Mechanism, Target Operating Costs, Target Revenues.</p> <p>If the Parties are unable to agree revisions to the Payment Mechanism etc, either Party may go to the Dispute Resolution Procedure. tie retains the right to terminate.</p>
<i>Indemnity</i>	<p>The Operator is required to indemnify tie with regard to any actions, claims, losses etc. which arise out of or as a consequence of breach of the DPOF Agreement, non-performance or delay in performance, or breach of any statutory duty by the Operator. No reciprocal indemnity.</p>
<i>Liability and Sole Remedy</i>	<p>Termination rights of either Party are only those rights set out in the DPOF Agreement (other than for fraud or fraudulent misrepresentation).</p> <p>There is no limitation on liability of the Operator for any breach of the DPOFA.</p>
<i>Performance Bond</i>	<p>During Project Phase D, the Operator is obliged to take out and maintain a performance bond. This Bond will be callable on demand by tie. The amount is to be confirmed; anticipated to be equivalent to about 6 months' operating costs (about £4-5m).</p>
<i>Required Insurances</i>	<p>The Operator is required to take out 3 types of insurance: professional indemnity insurance (£10m cover during Project Phases A, B and C with a 12 year "run off" period); employer's liability insurance (£10m cover during all Project Phases); and third party liability insurances (£5m during Project Phases A, B and C1 and £100m during Project Phases C2 and D). Annual review by tie. Uninsurable risk is dealt with by consensual approach. If uninsurable risk means unlawful to operate, termination occurs after six months.</p>
<i>Relief Events</i>	<p>"Relief Events" include:</p> <ul style="list-style-type: none"> • fire, explosion, lightning, flood etc.; • failure by statutory undertakers to carry out works or provide services; • accidental loss or damage to a material part of the System; • any failure or shortage of power or fuel; • any blockade or embargo; • strikes affecting the public transport industry in Scotland; or • CEC or a Roads Authority closing roads or restricting use of roads.

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	<p>The occurrence of a Relief Event may entitle the Operator to an extension of time and/or relief from termination for Operator Default. Obligation to mitigate the effects of any Relief Event</p> <p>No relief if information is provided late and the KPI Regime will be in operation.</p>
<i>Roads Changes</i>	<p>There are 3 types of Relevant Roads Change:</p> <ul style="list-style-type: none"> • Permanent Roads Changes which are treated as tie Changes; • Long-Term Roads Changes which persist for more than 3 months but are not permanent, are not treated as tie Changes but may result in amendments to the Operating Output Specification, a recalibration of the KPI Regime and/or adjustments to the Target Operating Costs/Costs but not Target Revenue; and • Temporary Roads Changes which persist for less than 3 months, are not treated as tie Changes but may result in amendments to the Timetable and/or amendments to the KPI Regime. <p>These must affect the passage of Trams and directly result in inability of the Operator to meet the Operating Output Specification.</p>
<i>Qualifying Changes in Law</i>	<p>Qualifying Changes in Law are Changes in Law which:</p> <ul style="list-style-type: none"> • come into effect during Project Phases C or D; • involve additional Operating Cost and/or necessitate amendment; and • were not reasonably foreseeable prior to the end of Project Phase B. <p>Once any mitigation/adjustments are agreed, the Qualifying Change in Law treated as a tie Change subject to the Operator's right to refuse to carry out the Change in specified circumstances, for example, if Change not technically feasible or illegal.</p>
<i>tie Changes Operator Changes</i>	<p>Parties may propose changes by serving Notice of Change. This Notice will set out details of the Change and require the Operator to provide an estimate with various information including whether relief from compliance of any obligations is required, impact on the Project Operations, impact on costs and revenues, whether any additional Necessary Consents are required.</p> <p>If tie does not confirm the Estimate within 30 days of the contents of the Estimate being agreed, tie Notice of Change is deemed to be withdrawn.</p> <p>If the Change is expected to exceed £10,000, tie may require the Operator to seek competitive tenders.</p>
<i>Performance and Financial Adjustments</i>	<p>In the event of a tie Change, Qualifying Roads Change or Permanent Roads Change, amendments will be agreed so that the Operator will be placed in a No Better No Worse position.</p>

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	<p>The agreed Profit Element will only be subject to change in the case of a tie Change which involves Network Expansion or a material alteration in the scope of the Project Operations such that it is reasonable to project a change in excess of 25% in either annual Operating Costs or annual Operating Revenues. The practical effect: if a change increases or decreases the Project Operations, the Profit Element will not be adjusted unless the Change is outside the stated parameter.</p> <p>However, during Project Phases A or B, if there is a truncation of Line 1 and/or Line 2, the Profit Element will be reduced on a pro-rated basis.</p>
<i>Network Expansions</i>	<p>tie may propose Network Expansions to the Operator and, if required, the Operator will carry out the required development services in relation to any such Network Expansions subject to agreement on fees.</p>
<i>Termination during Phases A and B</i>	<p>Termination rights available to tie:</p> <ul style="list-style-type: none"> • termination in whole, if no Line has reached Project Phase C2 or D at the time of termination; • termination in part, in respect of any Line which has not reached Project Phase C2 or D at the time of termination; • during Project Phase A or B, termination in whole or in part where the Project is not affordable or there are risks which would not be prudent for tie to retain (overlaps with overarching "no fault" termination provisions). • failure to agree target costs/revenues in respect of Terminated Lines, Network Expansions, or any other Lines, then tie may terminate the DPOF Agreement; • delay in Planned Service Commencement Date and there is no reasonable opportunity of commencement of operations within 6 months of the planned date.
<i>Termination on tie Default</i>	<p>A tie Default means:</p> <ul style="list-style-type: none"> • an expropriation of a material part of the System and/or shares in the Operator by tie or any Relevant Authority; • failure by tie to make payment of £200k due under the DPOF Agreement; • breach by tie of its obligations which substantially frustrates or renders it impossible for the Operator to perform its obligations; • a breach by tie of the assignment provisions.
<i>Persistent Breach</i>	<p>If the Operator has breached any of its obligations more than once, tie may serve a Persistent Breach Notice.</p>

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<i>Termination on Operator Default</i>	<p>"Operator Default" means:</p> <ul style="list-style-type: none"> • breach by the Operator of any of its material obligations; • Insolvency; • breach of the assignment provisions; • abandonment; • failure to achieve service commencement within three months of planned opening; • if the Operating Costs exceed the Target Operating Costs in 6 Reporting Periods out of any rolling period of 12 months (except in the first 3 years of operation).
<i>Termination on Force Majeure</i>	<p>"Force Majeure Event" means:</p> <ul style="list-style-type: none"> • war, civil war, armed conflict or terrorism; • nuclear, chemical or biological contamination (unless caused by the Operator); or • pressure waves caused by devices travelling at supersonic speeds. <p>Relief, entitlement, mitigation responsibility and termination if prolonged.</p>
<i>Termination for Corrupt Gifts and Fraud</i>	<p>tie may terminate for a Prohibited Act by Operator or its affiliates.</p>
<i>Voluntary Termination by tie</i>	<p>tie may terminate for:</p> <ul style="list-style-type: none"> • failure of the Operator to sustain its service integration arrangements; • Operating Deficit (costs exceeding revenues) in 6 Reporting Periods out of any rolling period of 12 months (except in the first 3 years of operation); and • failure to agree adjustments to the Target Operating Costs and Target Revenues at reset.

Topic	Key tenets and deliverables
<i>Compensation on Termination</i>	<p>No compensation on termination will be payable to the Operator on termination for any reason. However, the following liabilities/payments may arise:</p> <ul style="list-style-type: none"> • any antecedent liability of tie that arose prior to the Termination; • any liability arising because of breach by tie of its obligations on termination or tie default or voluntary termination; • entitlement of the Operator to a Vision Achievement Incentive Payment; and • payment of demobilisation costs demonstrably and reasonably incurred in respect of termination arising out of failure to agree Network Expansions, occurrence of Uninsurable risks.
<i>Transition on Termination or Expiry</i>	<p>The Operator is required to provide to tie following expiry or termination a Handback package:</p> <ul style="list-style-type: none"> • employee details; • list of contracts, permits, licences, consents etc. • list of computer systems and software; and • insurance details. <p>The Operator to co-operate and liaise with tie and any Successor Operator.</p>
<i>Transfer of Personnel</i>	<p>TUPE obligations on the Operator on termination or expiry of the DPOF Agreement.</p>
<i>Dispute Resolution Procedure</i>	<p>There are two different types of DRP:</p> <ul style="list-style-type: none"> • referral to Chief Executives then court for Disputes arising during Project Phases A and B; and • referral to Chief Executives, mediation, adjudication and then court for all other Disputes. <p>Disputes need to be raised within 3 months of the occurrence of the event leading to the Dispute.</p> <p>A right to pursue a Dispute will be waived if there is a failure to observe a time limit within the DRP.</p> <p>Joinder of a Dispute under the DPOF Agreement with a dispute under the Infrastructure Delivery Agreement.</p>
<i>Assignment and Changes in Control</i>	<p>The Operator may not assign any of its interests, rights or obligations or sub-contract any of its obligations without the prior written consent of tie.</p> <p>tie may not assign or novate without the prior written consent of the Operator except to certain stipulated public bodies, including TETL.</p>

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	No change of control of the Operator (or its parent company) without tie's written approval for 3 years following the Service Commencement Date.
<i>"Boilerplate"</i>	The DPOF Agreement contains standard "boilerplate" provisions.