

## AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL, the Local Authority for the said City ~~under constituted in terms of~~ the Local Authority etc. (Scotland) Act 1994 and having its principal offices at City Chambers, High Street, Edinburgh (hereinafter referred to as “the Council”)

### OF THE FIRST PART

and

~~XXXX~~TRANSPORT INITIATIVES EDINBURGH LIMITED, a company incorporated under the Companies Acts and having its Registered Office at City Chambers, High Street, Edinburgh (Registered Number XXX) (hereinafter referred to as “the Company”)

### OF THE SECOND PART

#### WHEREAS:-

- (One) The Council and SESTRAN (the South East Scotland Transport Partnership), a voluntary partnership of nine local authorities, have come together to identify, develop, implement and monitor matters of mutual transport interest.
- (Two) The Council on 18 October 2001 agreed to approve an Integrated Transport Initiative for Edinburgh and South-East Scotland as summarised in Part I of the Schedule annexed and executed as relative hereto as required in terms of Section 49(3) of the Transport (Scotland) Act 2001 (hereinafter referred to as “the Act”);
- (Three) In terms of Section 49 of the Act 2001 the Council, as the Local Traffic Authority, acting with SESTRAN, may wish to introduce a ~~r~~Road ~~u~~User ~~e~~Charging ~~s~~Scheme as part of its Local Transport Strategy.
- (Four) The Council, in terms of the powers conferred by Section 61 of the Act, wish to enter into an arrangement with ~~XXXX~~Transport Initiatives Edinburgh Limited, a company formed by the

Council for the specific purpose of either the making, establishment and/or operation of the Road User Charging Scheme or relating to the installation or operation of any equipment used for or in connection with the operation of the Road User Charging Scheme as well as assisting in the delivery of the Council's Local Transport Strategy;

- (Five) The Company has agreed to assist the Council in delivering the Local Transport Strategy as varied by the Council from time to time by developing, procuring and implementing integrated transport projects within Edinburgh and the surrounding area and in particular the Road User Charging Scheme.

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

FIRST

DEFINITIONS

In this Agreement the following words and expressions shall have the following meanings:-

INTEGRATED TRANSPORT INITIATIVE shall mean the Integrated Transport Initiative for Edinburgh and South-East Scotland presented to and approved by the Council on 18 October 2001 until superseded and/or amended by the Council after which the Integrated Transport Initiative shall be such amended version;

~~"IPR" shall mean Intellectual Property Rights;~~

~~"O & M" shall mean Operations and Maintenance;~~

~~"RUC" shall mean Road User Charges;~~

~~"RUCS" shall mean Road User Charging Scheme;~~

~~"Annual Business Plan" - means the Annual Business Plan annexed as relative hereto, being the Annual Business Plan for the first year and in each consecutive year thereafter means the Annual Business Plan submitted by the Company and approved by the Council in terms of clause SIXTH~~

~~(B);~~

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“SESTRAN” ~~shall~~ means the South East Scotland Transport Partnership;

“Spend to Save Fund” means the fund approved by the Council on 9 March 2000 of which the maximum sum of £690,000.00 was approved for the New Transport Initiative;

“STRATEGY” - ~~shall~~ means the Integrated Transport Initiative as summarised in Part I of the Schedule attached hereto, as varied from time to time;

SECOND This Agreement shall commence on the date of execution hereof

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Commencement and Term and shall subsist so long as the Company remains in existence or until termination in terms of clause SEVENTEENTH.

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THIRD The Company hereby binds and obliges itself:-

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The Company's Obligations (1) To comply in all respects with the Annual Business Plan (including any amendments the Council considers necessary).

Obligations (2) In so far as not already done (i) to develop, procure and implement integrated transport projects within the Council and SESTRAN area. These projects will form part of the Integrated Transport Initiative as defined by the Council from time to time and notified by the Council to the Company. The projects will include but not be restricted to those projects detailed in the Strategy as set out in Part 1.2 of the said Schedule and any other projects approved by the Council. The Company accepts that the projects must be approved by the Council and the number and extent of the projects may be varied by the Council and that the Council at its sole discretion may request the assistance of the Company in respect of every integrated transport project.

(23) To ensure best value in the use of funds provided by the Council and revenues generated by the projects including Road User Charges; to act commercially; to work with the Council to ensure that all of the statutory requirements on the Council to re-invest receipts and profits from projects and new transport initiatives are met; to apply principles of good corporate governance; and to cooperate with any monitoring operation carried out by or on behalf of the Council, in particular the Company will provide a copy of all

Board papers to the Council's monitoring officer as advised by the Council;

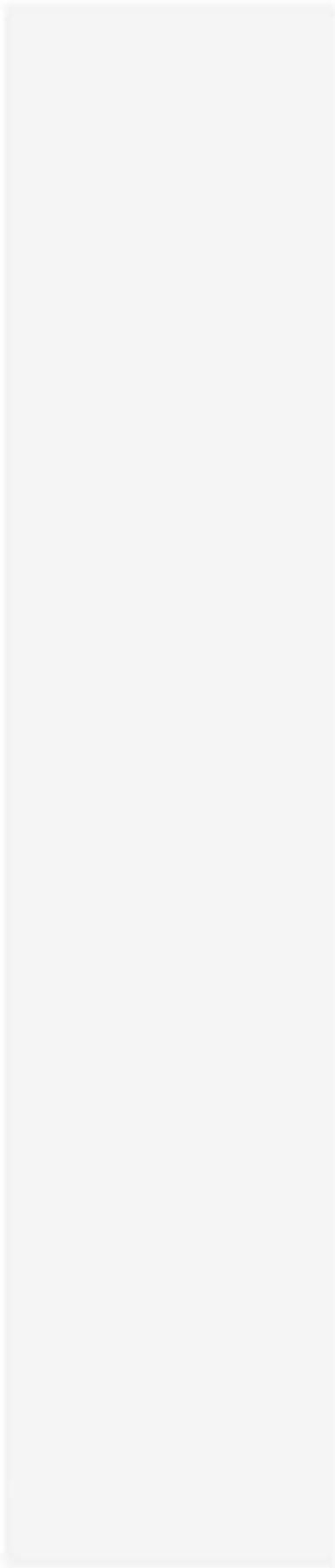
- (34) To carry out project related activities including but not restricted to:-
- (i) assisting the Council in carrying out or commissioning necessary feasibility work;

- (ii) assisting the Council in prioritising integrated transport projects to agreed criteria on value for money, social and environmental benchmarks;
- (iii) assisting the Council in obtaining any necessary statutory approvals where appropriate;
- (iv) assisting the Council in trying to achieve public acceptance of these schemes through: (a) public consultation; (b) preparation of necessary publicity material; (c) communication with all necessary stakeholders; and (d) preparation of exhibitions etc.
- (v) obtaining all other necessary consents and planning permissions;
- (vi) establishing the optimal procurement strategy for each project;
- (vii) preparing specifications and contract documents;
- (viii) managing the bidding process and meeting all requirements where applicable of the procurement process;
- (ix) managing the award and implementation of the projects;
- (x) ensuring that the necessary, quality, financial and supervisory controls are implemented over the life of the project;
- (xi) establishing and monitoring Operations & Maintenance procedures;
- (xii) ensuring ongoing value for money.
- (xiii) assisting the Council in obtaining funds for Transport Projects through appropriate grants from inter alia the Public

Transport Fund, the Integrated Transport Fund and funds available to support rail projects from the Strategic Rail Authority or others;

- (xiv) securing a relevant share of any increase in revenue to third parties such as fare box revenue resulting from projects implemented by the Council;
  - (xv) ensuring that relevant windfall opportunities are obtained eg. IPR fees;
  - (xvi) seeking funding based on net income through bank finance bonds, income securitisation etc.
  - (xvii) seeking equity funding and partners if appropriate.
- (45) To procure, implement and operate a Road User Charging Scheme all as defined in Part 3 of the Act. This will require the Company to assist the Council:-
- (i) to ensure statutory approval for the scheme by (a). assisting with preparation of a Charging Order; (b) in dealing with any objections and any Public Inquiry; and (c) submission for final Order approval;
  - (ii) to try to achieve public acceptance of the scheme by (a) preparing necessary publicity material; (b) communicating with all necessary stakeholders; and (c) preparing exhibitions and carrying out all other necessary procedures;
  - (iii) to carry out the development of the scheme. This will require the Company to: (a) plan, cost and evaluate the scheme; (b) assess risk and value management; (c) prepare programme management; (d) develop legal and commercial contract strategy; (e) prepare and cost a draft scheme against

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a public sector comparator; (f) develop relevant procurement strategy; (g) develop necessary ongoing contract management strategy; (h) prepare contract documentation and specification;

- (iv) to implement this scheme. This will require the Company to:- (a) manage the pre-qualification process; (b) manage the bidding process; (c) award the contract; (d) manage the implementation process in line with the contract obligations; (e) provide the necessary testing; (f) provide the necessary training; (g) ensure operational acceptance; (h) ensure a satisfactory maintenance period is achieved;
- (v) to manage the operation of the scheme. This will require the Company to: (a) carry out the necessary quality and operational performance monitoring of the contract; (b) monitor revenue stream returning to the Council; (c) ensure any handover or termination criteria are met; (d) carry out benchmarking exercises to ensure ongoing value for money; (e) establish feedback and ongoing development;
- (vi) to account for the Road User Charging Scheme in a separate ring fenced account, as a separate business account in the name of the Council, following the best accounting standards and to report to the Council on a monthly basis with a reconciliation of revenues to the said business account;

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- (56) Given the level of public sector funding the Company will, where appropriate follow regulations governing public procurement.
- (67) To work with the Council to ensure that revenues raised from Road User Charges are managed in the most cost and tax efficient manner.
- (78) To require all professional advisers and contractors where appropriate to provide Duty of Care Agreements in favour of the Council.
- (81) ~~(9)~~ To allow the Council to examine the books, accounts and other records, kept by the Company and each of its subsidiary undertakings (if any) and to supply the Council with all relative information, including -quarterly management accounts, budgets and management reports (including explanations of variances against budget) statutory accounts in respect of each financial year of the Company and each of its subsidiary undertakings (if any) and such other trading and financial information relating to the Company and each of its subsidiary undertakings (if any) in such form as the Council may reasonably require to keep them properly informed about the business of the Company and each of its subsidiary undertakings (if any) and generally to protect the Council's interest.
- ~~(9)~~(10) In respect of ~~(89)~~ above to participate in a high level "Partnership Liaison Group to be established by the Council and to meet on a regular basis to bring together the Company, the Council and the Scottish Executive. The aim of said Group will be to assure the mutual exchange of information about the Integrated Transport Initiative and the projects and initiatives within it: and to resolve any disputes, conflicts or misunderstandings by agreement.

- (101) Unless the Council directs otherwise, ~~To~~ retain ownership of the assets acquired by the Company and to maintain the assets to the highest standard until termination of this Agreement.
- (112) To transfer all of its right, title and interest in and to the residual assets of the Company to the Council at zero cost on termination of this Agreement, whenever that might be.

(123) To obtain all necessary insurance cover for potential liability resulting from ownership of the assets.

~~THIRD~~FOURTH

Council's  
Obligations

(1) The Council have secured funding for transport projects ~~and the Council will transfer such funding to the Company on the final date of signing hereof~~ to enable the Company to work on and deliver projects referred to in Part 2 of said Schedule.

(2) ~~All future revenues received by the Council in respect of the Road User Charging Scheme will be used by the Council to assist the Company in the procurement, implementation and management of projects included in the Strategy and will be paid to the Company against appraisals and/or invoices.~~

(3) ~~The Council will agree an Annual Business Plan for the initial year and each consecutive year thereafter and will make contributions monthly against invoices from the Company subject to being satisfied that the quarterly reports to be prepared by the Company properly reflects the agreed position in each Annual Business Plan.~~

(2) The Council will make payment within 28 days of receipt of the monthly invoices submitted by the Company, which relate to the Services provided by the Company in terms of the Annual Business Plan and the terms of this Agreement. Said invoices will be in a format specified by the Council and payment will be subject to the Council being satisfied that the quarterly reports prepared by the company in terms of clause THIRD (3) properly reflects the agreed position in each Annual Business Plan.

(3) The Company agree to issue loan stock to the Council in an amount determined by the Council (which shall equal the amount issued by the Council to the Company from the Spend to Save Fund). Said

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loan stock shall be repayable to the Council at a date or dates to be agreed with the Company following commencement of the Road User Charging Scheme.

- (4) All future revenues which may be received by the Council under the Road User Charging Scheme will be paid to the Company against appraisals and/or invoices which relate to the procurement, implementation and management of projects included in the Strategy and as detailed in the Annual Business Plan.
- (45) The Council will use its reasonable endeavours to ensure that the Company will be given power to enforce payment tolls on behalf of the Council by the imposition of additional charges.
- (56) The Council will use its reasonable endeavours to appoint up to four non-executive directors from outwith the Council with a proven track record in business, finance and or transport, who would bring valuable expertise to the Board of Directors. These would be annual appointments made by the Council. The Council may re-appoint any director.

(67) The Council will nominate an individual to act as a liaison officer for day to day communication between the company and the Council;

~~(8) At termination of this Agreement the Council will accept all right, title and interest in the assets of the Company transferred by the Company at zero cost.~~

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FOURIFTH  
Council Sites

In the event that the Council and the Company agree that it would assist the objective of delivery of part or parts of the Strategy the Council may at its sole discretion grant a licence to occupy or a lease over property owned by the Council in favour of the Company, the licence fee or rental to be determined at Open Market Valuation by a third party independent valuer. The Council at its sole discretion may in certain circumstances require payment only of a nominal licence fee or a peppercorn rent.

Where the Council owns and has granted a Licence to occupy or a lease of a site to be used in connection with a project and with effect from the applicable entry date:-

- (1) the Company and any contractors appointed in connection with the project shall have the right under licence to enter the site to carry on the project; and
- (2) the Company shall indemnify the Council from and against all damage, loss, expense, liability and costs in respect of actions, suits, claims and demands whatsoever by reason of or arising in any way directly or indirectly out of the repair, state of repair, condition, existence or use of the site or any part or parts thereof or the existence or execution of the works or the breach of or noncompliance with any Local Authority, Planning or Building Authority or other consents and shall effect or cause to be effected

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at no expense to the Council all necessary and sufficient third party insurance being for at least a minimum of £5,000,000 and with the

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interest of the Council as proprietor endorsed thereon against which it is Possible to insure at a reasonable cost with an insurance company or with Lloyds Underwriters approved by the Council and shall produce such policy or policies to the Council on having been given written notice thereof, together with evidence of payment of the current premium or premiums in respect thereof.

The length of the licence period or any lease will be determined by the borrowing requirements required to secure delivery of the project. Ownership of construction on licenced or leased sites will remain with the Company for the duration of the Licence or lease and will transfer to the Council on termination thereof.

#### FIFTHSIXTH

#### Funding

- (1) The Company shall be responsible for ensuring that its future capital and revenue funding requirements to finance the project, strategies or schemes as required by the Council are met.
- (2) The Council and the Company will ensure that all monies received by the Council from Road User Charging for funding for transport projects and all net surplus monies held by the Company will be used to finance transport projects after covering agreed Company costs.
- (3) The Council will be supplied by the Company on or before 31 December in each year with a draft Annual Business Plan (incorporating capital and revenue budgets, profit and loss account, balance sheet, 12 monthly cashflow statement and expenditure and output targets for each quarter) for the Company for its next financial year which will allow the Company to deliver the targets as specified by the Council from time to time. The draft Annual

Business Plan will also detail the proposed scope of operations for the year, a project implementation plan, a financial model for the

implementation plan, a financial analysis including public, private funding, balance and revenue potential both from Road User Charges and “farebox” enhancement etc. The draft Annual Business Plan will identify the breakdown of the costs of each project and in addition for any individual transaction in excess of £5m. The Company will include in the draft Annual Business Plan any proposed public/private partnership strategy, the proposed procurement strategy, a risk allocation model and the proposed staffing and resource allocation to deliver the business plan on time and within budget, together with contingency provision.

- (4) The draft Annual Business Plan for each financial year shall be approved by the Council (such approval not to be unreasonably withheld) prior to the commencement of that financial year with such amendments as the Council consider necessary and thereafter such aAnnual Business Plan incorporating all such amendments and as approved by the Council shall in this Agreement be referred to as the “Annual Business Plan” for that financial year.
- (5) At the same time as approving the Annual Business Plan the Council shall agree the amount and form of each or any contributions to be made by the Council in the financial year to which the Annual Business Plan relates.

#### SIXTEENTH

##### Indemnity

The Company shall be wholly responsible for meeting timeously all obligations, liabilities or claims of whatsoever nature arising out of or in connection with each project and the implementation of the Company's obligations under this Agreement and hereby binds and obliges itself to

indemnify the Council fully against all liability for such obligations, liabilities or claims.

SEVENEIGHTH

Notices

Any Notice requiring to be served hereunder shall be in writing and shall be sufficiently served upon the Council if sent by pre-paid Recorded Delivery post, addressed to the Director of City Development, One Cockburn Street, Edinburgh, or such other authorised representative of the Council as the Director of City Development may notify in writing to the Company and upon the Company if sent by prepaid Recorded Delivery post, addressed to City Chambers, High Street, Edinburgh or such other address as the Company may notify in writing to the Council and any such Notice shall be deemed to have been served Forty eight hours after the date on which the same was posted as aforesaid (excluding weekends and public and statutory holidays). In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Company or to the Council as the case may be in accordance with this Clause and posted to the place to which it was so addressed.

EIGHTNINTH

Intellectual  
Property  
Rights

The copyright, patent, design rights and any and all other intellectual property rights of whatever nature in any drawings, document, reports, plans and related materials provided by the Company to the Council or prepared by the Company in the performance of its obligations in terms of this Agreement shall vest in the Council unless the Council otherwise agrees in writing, which agreement may be subject to such conditions as the Council consider appropriate.

NINTENTH

Assignment

This Agreement is personal to the Company and the Council, who shall not be entitled to assign their rights hereunder nor, except as herein provided, to delegate the performance of the respective obligations

incumbent upon them under this Agreement to any other party.

TENELEVENTH

Staffing

The Company shall recruit and employ such staff and advisers as are required by the Board. Staff may be seconded to or contracted to work with the Company on a full or part time basis and otherwise on terms to be agreed between the Company and the Council. If the Company consider any person so seconded is not suitable for employment in connection with the business it may require the Council to withdraw and replace such person or to take such other steps as may be necessary or expedient. All the salaries, wages, allowances, travelling and accommodation expenses and others to which such personnel may be entitled and all necessary employers, pension and national insurance contributions shall except where otherwise agreed, be borne and paid by the Company, declaring for the avoidance of doubt that where any of such expenditure has been incurred by the Council the Company shall reimburse the Council with the amount of such expenditure.

ELEVENTWELTH

Provision  
of services  
to the  
Company

If so required by the Company the Council may provide the following services to the Company in connection with this Agreement:

- (a) office accommodation as the same may be required and is available;
- (b) accounting and administrative services, all to be provided to a standard reasonably acceptable to the Company.

The Council shall be remunerated at the appropriate professional or commercial rate for the service rendered unless otherwise agreed. The Council shall not be obliged to supply services at any time when it

considers that such supply would be prejudicial to the conduct of the Council's own business.

~~TWELFHIRTEENTH~~ The first Chairman shall be ~~Ewan Brown~~ as the Chairman nominee of the ~~Chairman~~ Council and the identity of the Chairman thereafter shall be determined annually by the Council, on written notice to the Company. The Council shall be entitled to change the identity of the Chairman or fill any vacancy in the office of Chairman at any time outwith the annual cycle of appointments by written notice to the Company. The Chairman of the Board shall not have a second or casting vote.

~~THIRTEENTH~~ Except with the consent in writing of the Council the Company shall not:-

Matters requiring the consent of the Council

- (a) create, any fixed or floating charge, lien (other than a lien arising by operation of law), security or encumbrance over the whole or any part of the undertaking, property or assets of the Company;
- (b) borrow or raise any sum of money other than in the ordinary and proper course of its business;
- (c) make any loan or advance or give any credit to any person, other than in the normal course of business;
- (d) give any guarantee or indemnity to secure the liabilities or obligations of any person;
- (e) sell, transfer, lease, assign or otherwise dispose of a material part of the undertaking, property and/or assets of the Company or contract so to do;
- (f) issue any shares or any loan stock or any debentures or other securities convertible into shares or debentures or any options in respect of shares in the Company;

- (g) acquire, purchase or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any company, trust or other body;
- (h) register any transfer of shares in the capital of the Company;
- (i) appoint any person as Chief Executive or Chief Finance Officer of the Company;
- (j) enter into any partnership or profit sharing agreement with any person;
- (k) exceed the total expenditure budget contained in the Annual Business Plan by more than 5%, provided that the Company has sufficient funds to meet additional expenditure when incurred without requiring further funding beyond that provided for in the Annual Business Plan from the council or any third party.

FOURFIFTEENTHStatements  
To the  
Press

The Company undertakes not to make any statement to the Press without the prior approval of the Council. Every request for a statement to the Press shall be noted and reported to the Council. All references to the Council shall be made in the first instance to the Council's Director of City Development.

FIFTEENTHDispute  
Provisions

In the event of any dispute or difference arising between the Company and the Council with regard to the construction of this Agreement and the obligations arising therefrom, shall be determined by a single Arbitrator to be appointed by the parties concerned in the dispute or, failing agreement, by the President for the time being of the Law Society of Scotland and shall be deemed to be a Submission to Arbitration within the Arbitration (Scotland) Act, 1894, and any statutory modification or re-enactment thereof for the time being in force and the decision of any Arbitrator appointed in terms of

this Clause shall be final and binding on the parties concerned in the dispute and the said Arbiter shall have the power to award expenses as he may think fit and the parties hereto hereby expressly waive and exclude any rights competent to them to require the said Arbiter to state a Case for the opinion of the Court of Session on any question of law arising in the Arbitration and, accordingly, Section 3 of the Administration of Justice (Scotland) Act, 1972, shall not apply to any Arbitration hereunder.

SEVENTEENTH     Termination     Either party shall be entitled by notice in writing to forthwith terminate this Agreement if the other party is in material breach of any provision(s) of this Agreement and has failed to remedy that breach (if capable of remedy) within 14 days after receiving notice of such breach.

SIXEIGHTEENTH     Law     This Agreement and the whole matters following hereon shall be construed and receive effect according to the Law of Scotland.

SEVENNINETEENTH     A11 terms, conditions and undertakings contained in these presents, in so

Continuation of Agreement     far as of a further or continuing nature, are unaltered and will continue and remain in full force and effect and may be founded upon.

EIGHTWENTEINTH     If any ambiguity or conflict arises between the terms of this Agreement

Terms of this Agreement to Prevail     and those of the Articles of Association, the terms of this Agreement shall prevail as between the parties.

NINETEENTHTWENTY FIRST     (1)     This Agreement does not and shall not in any circumstances

Miscellaneous     constitute a partnership between the parties hereto.

(2)     The Company is not/shall not at any time hold itself out or permit or suffer itself to be held out as the agent of the Council for any purpose.

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- (3) Nothing herein contained shall (a) import any warranty by the Council in respect of any site owned by the Council to be used in connection with any project or (b) prejudice or affect the Council's rights, powers duties and obligations in the exercise of their functions as local authority or in any other capacity whatsoever under or by virtue of any public, general or local Statute, ●order,

Instrument, Regulation or Bye-law in operation from time to time in the City of Edinburgh or relieve the Company from the necessity of obtaining such approvals or consents in respect of the plans or otherwise as may from time to time be required from the Council in any such capacity in terms of any such public, general or local Statute or others foresaid.

- (4) In construing this Agreement, the marginal headings shall be ignored.
- (5) In the event of Value Added Tax (VAT) or any other charge tax or levy being chargeable in respect of any payment to be made in terms hereof such Value Added Tax, Charge Tax or Levy will be payable by the party due to make such payment in addition to such payment.

~~TWENTY SECOND~~ TWENTY SECOND The Council and the Company shall each bear their own legal fees and

Expenses outlays in connection with this Agreement and Schedule annexed hereto.

~~TWENTY FIRST~~ TWENTY THIRD The Council and the Company shall enter into separate Project Agreements

Separate Agreements as necessary in respect of each project if so required by the Council.

~~TWENTY SECOND~~ TWENTY FOURTH The Council may vary the Part 1-2 of the said Schedule at any time during the

Variations subsistence of this Agreement and any such variation shall be made in writing between the parties hereto.

~~TWENTY THIRD~~ TWENTY FIFTH The Company and the Council agree that both parties where appropriate, will apply the Code of Guidance and Conduct relating to Corporate Governance incorporated in "A framework for Governance of

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Council Companies”, being a report submitted to the Executive of the Council on 18 December 2001 as such code may be varied/updated from time to time.

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TWENTY FOURTHSIXTH The parties hereto consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding pages, together with the Schedule and the Annual Business Plan are executed as follows:

They are executed for and on behalf of The City of Edinburgh Council by the following Proper officer before the following Witness:

Proper officer..... Witness.....  
Name of Person Signing..... Name.....  
Capacity in which signs..... Address.....  
Date.....  
Place.....

They are executed for and on behalf of the Transport Initiatives Edinburgh Limited before the following Witness:

Representative..... Witness.....  
Name of Person Signing..... Name.....  
Capacity in which signs..... Address.....  
Date.....  
Place.....

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AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL  
OF THE FIRST PART

and

~~XXXX~~ TRANSPORT INITIATIVES  
EDINBURGH LIMITED  
OF THE SECOND PART

2002

EDWARD BAIN, LLB  
COUNCIL SOLICITOR  
CITY CHAMBERS  
HIGH STREET  
EDINBURGH