

## SDS NOVATION PLAN

Commercially sensitive – FOISA section 33

### 1.0 Purpose

- 1.1 The purpose of this plan is to set out the principles, steps and programme necessary to effect the novation of SDS to Infraco as agreed between SDS, BBS and **tie**.
- 1.2 The Project Procurement Strategy requires the novation of SDS to Infraco to maintain the single point responsibility for design, construction, commissioning, maintenance, affordability and risk allocation objectives of the strategy.
- 1.3 The plan addresses the following aspects:-
  - Contractual requirements
  - Scope of novation
  - Technical – the issues that need to be addressed to enable novation to proceed without creating disconnects in designs and specifications of the respective parties
  - Programme for novation – the steps to conclude a novation at Financial Close

### 2.0 Contractual

- 2.1 The novation will be effected via the draft novation agreement contained in schedule eight of the SDS contract. The novation agreement will contain the following:-
  - Changes to the SDS contract terms via Appendix 1
  - Scope to be provided direct to **tie**
  - SDS Disclosure Statement
  - Status Of Design
  - Status Of Consents
  - Statement of Commercial Position
  - Collateral Warranty from Halcrow
  - Agreed Detailed Design Standard (See para 7 below)The content of these sections is defined below.
- 2.2 A collateral warranty is required from Halcrow in the form attached. This is to be provided at the same time as the signature of the novation agreement and novation is conditional upon its provision. No collateral warranties are required from Courderoys or Ian White Associates (*BBS to confirm*). The Form of Warranty is enclosed as Appendix A.
- 2.3 Changes to the SDS contract terms are as follows (drafting to be agreed where appropriate):-
  - In Schedule 1 reference to “tie” to be substituted with “Client”
  - In Schedule 1 the services referred to in Section 3 below will be deleted.
  - Schedule 11 clause 1.4 shall be amended as follows:-  
Delete current clause 1.4 and substitute:-

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“1.4 Edinburgh Tram Network operations shall support the following journey times:

1. Phase 1a – Airport to Ocean Terminal (Newhaven ?) shall have an end to end journey time including layover of ????? all runtime assumptions shall be agreed by **tie**.
2. Phase 1b – Ocean Terminal to Granton Square shall have an end to end journey time including layover of ????? All runtime assumptions shall be agreed by **tie**.
3. Common corridor – The section between Haymarket and Ocean Terminal shall have an end to end journey time including layover of ????? All runtime assumptions shall be agreed by **tie**.”

- The above changes will be added to those currently in the Draft Novation Agreement included in the SDS contract.

### 3.0 Scope to Be Provided Direct To tie

3.1 A direct contract will be established between tie and SDS at the same time as the novation agreement is signed. The scope of this contract (“the Services”) will be for:-

- Provide technical support and advice, including but not limited to feasibility, preliminary, detailed design and obtaining all ancillary consents, necessary to enable tie and CEC to
  - obtain core traffic regulation orders (TROs)
  - obtain TROs for wider area traffic measures
- Provide technical support and advice, including but not limited to feasibility, preliminary, detailed design for wider area traffic measures including those outside the LOD and LLAU which are necessary to enable the traffic system in Edinburgh to operate at optimal level following completion of the Edinburgh Tram Network.
- Provision of utilities designs in accordance with Schedule 1 including general technical support and on-site support for these works and in accordance with any Changes in respect of utilities designs
- Provision of design and technical support in respect of future extensions to the scheme as tie may from time to time instruct. The extent of such services remains at tie’s discretion and tie reserves the right to tender such services. The option included in the direct contract does not represent prequalification of SDS for any such tender shortlist for such services.
- Provision of such other design and technical support in respect of the Edinburgh Tram Network as tie may from time to time instruct

3.2 The terms of the contract between tie and SDS will be as those contained in the SDS Contract dated 19<sup>th</sup> September 2005 with the following changes:-

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- Schedule 1 – shall be as Appendix B to this Plan
- Schedule 2 – Key Personnel shall be Alan Dolan, David Pluse, Brian McCreer, Chris Reed, Warren Murphy + Tom Kelly's replacement. These personnel shall not provide services to BBS until such time as their work supporting tie under this direct contract are completed, unless otherwise agreed in writing by **tie**. Confidentiality Agreements will be required from these individuals to ensure that no breaches of confidentiality in respect of the services provided direct, particularly in respect of BBS, and that conflicts of interest with BBS are avoided.
- Schedule 3 - Pricing Schedule shall be as Appendix C to this Plan
- Schedule 4 – Programme shall be as Appendix D to this Plan
- Schedule 5 – Deleted
- Schedule 6 – Insurances shall be as included in the current contract
- Schedule 7 – Deleted (the collateral warranty will be incorporated into this contract)
- Schedule 8 – Novation Agreement – Deleted
- Schedule 9 – Review Procedure shall be as included in the current contract
- Schedule 10 – Panels For The Dispute Resolution Procedure shall be as included in the current contract
- Schedule 11 – Requirements Specification for Overall System Operational and Performance Requirements shall be as included in the current contract in so far as it relates to the scope of this contract
- Schedule 12 - Requirements Specification for Civil Engineering shall be as included in the current contract in so far as it relates to the scope of this contract
- Schedule 13 - Requirements Specification for Supervision, Command And Control Suite Of Systems shall be as included in the current contract in so far as it relates to the scope of this contract
- Schedule 14 – Requirements Specification for Electrification & Power shall be as included in the current contract in so far as it relates to the scope of this contract
- Schedule 15 – Requirements Specification for Tram Vehicle shall be as included in the current contract in so far as it relates to the scope of this contract
- Schedule 16 – System – Wide Non – functional Requirements
- Schedule 17 – Agreement Between the SDS Provider and the Joint Revenue Committee
- Retention Bond to be provided for the retained scope.
- Provide a parent company guarantee for the retained scope, in the form contained in the SDS Contract.

3.3 Requirements Definitions, Preliminary Designs and Detailed Designs as approved by **tie** and as may be delivered and approved by **tie** under

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the novated contract to Infraco shall be incorporated into this contract to the extent that they are required in order to deliver the Services.

### 4.0 SDS Disclosure Statement

4.1 In order that the status of the SDS contract pre and post novation is clear details of the status of progress and commercial position must be clearly stated within the novation agreement. To this end SDS warrant the following to Infraco as at the point of Novation (practically the position at 5<sup>th</sup> January 2008:-

- that ~~tie's~~ liabilities are discharged in terms of payments, save as expressly carved out.
- that the design fits within the LoDs advising where this is not the case and the implications for the design delivery.
- SDS have complied with their obligations under Clause 3 of the SDS Contract specifically and that no extensions of time or other claims are sought or anticipated to be sought from ~~tie~~ in respect of events, actions or inactions prior to the date of novation or events, actions or inactions foreseeable at the date of novation.
- the full scope of design deliverables produced for ~~tie~~ and the status of each along with relevant consents. See appendix E.
- the status of the identified design deliverables as being capable of deployment by the Infraco without further design refinement. See Appendix E.
- that there are no claims or disputes regarding its design deliverables.
- that the design meets the Employer's Requirements as at the date of Novation, including compliance with the Noise and Vibration Policy, code of Construction Practice and Environmental Statement and the like.
- that the design complies with Consents (including Land Consents) and ~~Special Requirements and Third Party Agreements.~~
- That the designs take account of and incorporate the requirements of Third Party Agreements and Parliamentary Undertakings.
- That there are no Changes in Law which affect the designs as currently completed or to be completed (Preliminary Design or Detailed Design)

4.2 In addition SDS are to

- identify any outstanding design deliverables, the programme. See Appendix E.
- costs for the production and finalisation of outstanding design deliverable post novation in accordance with the SDS Contract and Changes instructed as at the date of Novation. See Appendix F
- confirm in the novation agreement that they are responsible for obtaining the listed Consents and will be obliged to obtain those

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Consents (including Building Fixing consents/agreements) in accordance with the BBS programme. The listed consents are as set out in Appendix E.

- confirm the status of all consents which it has sought in connection with its design and project support services. The status of consents currently is as set out in Appendix E.
- confirm provision of collateral warranty for **tie** and CEC as provided for in the SDS Contract.
- provide collateral warranties in favour of Network Rail and BAA (EAL)
- confirm any retained scope and Infraco acknowledges this arrangement as set out in Section 3 above.

4.3 **tie** warrant to Infraco **that tie's** payments to SDS are fully up to date and identifies any outstanding payments as carved out of Infraco's obligations as novated client.

4.4 **tie** is to identify and confirm any retained scope and Infraco acknowledges this arrangement as set out in Section 3 above.

4.5 **tie**/SDS/Infraco acknowledge full scope of novated SDS services.

4.6 For the purposes of this Disclosure Statement the status will be as of 5<sup>th</sup> 2<sup>nd</sup> January 2008.

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### 5.0 Status Of Design and Consents

5.1 The status of the design and consents is to be as exists at 5<sup>th</sup> January 2008. The status summary is to set out in detail:-

- The design deliverables provided to **tie** (title, description and document reference), their status ie Design Completion notified to **tie**, submitted awaiting comment/approval or acceptance for Prior Approval, submitted with Design Assurance Statement awaiting comment/approval or acceptance for Technical Acceptance, Prior Approval Granted, Technical Approval Granted.
- The extent to which each Change has been incorporated into the design deliverables.
- For each deliverable the status of any applicable consents i.e. details of the consents required and for each consent for each deliverable consent obtained, consent application submitted and date on which consent expected, date consent application to be submitted and date consent expected.
- For each deliverable submitted under a Design Assurance Statements whether the design deliverable is capable of deployment by the Infraco without further refinement.
- A copy of the SDS programme progressed for work completed up to 5<sup>th</sup> January 2008.

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- 5.2 The pro formas/current position in respect of the above are to be included in Appendix D so that all parties are clear and agreed on the format and content.

### 6.0 Statement Of Commercial Position

- 6.1 The commercial position is to be as at 5<sup>th</sup> January 2008. The format and status is to be as set out in Appendix E. This will set out:-

- A summary of the financial position for the novated contract
  - current contract costs, including accepted changes and changes submitted but not yet agreed,
  - payments certified to that date,
- A list of the Changes accepted by tie

- 6.2 tie will pay direct to SDS all payments certified up to 5<sup>th</sup> January 2008.

### 7.0 Detailed Design Deliverables

- 7.1 SDS confirm that their Services include for:-

- construction drawings and as built drawings will be provided
- that in the "System Design Spec" a RAMS analysis/concept is provided with a break down to each function, including vehicles
- in "Planning Approvals" all approvals to tie, CEC, Network Rail and any other authority is included
- test & commissioning procedures are included in the "Requirements Test Spec" or the "System Design Test Spec"
- all changes resulting from BBS amendments in the Employer Requirements and the Tram design as a result of the bidding phase will be covered in this agreement

### 8.0 Scope Not Required by BBS

- 8.1 BBS do not require the following services and scope to be provided by BBS:-

- *BBS to advise*

- 8.2 A change order will be issued to reflect this and the SDS Contract Sum adjusted accordingly, to the extent that such services and scope have not already been delivered.

### 9.0 Technical

- 9.1 The Infraco Employer's Requirements, Infraco Proposals, Tram Vehicle Employer's Requirements, Tramco Proposals and SDS Design (SDS Design is all of the deliverables under the SDS Contract) must align each with the other at novation. This does not mean that each must contain the same statements but that the documents must not conflict with each other.

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- 9.2 Alignment of the SDS design and Employer's Requirements means:-
- The SDS design should not conflict with the Employer's Requirements
  - That the SDS designs completed to date will deliver the requirements of the Employer's Requirements
  - That the SDS designs to be completed will deliver the requirements of the Employer's Requirements
  - Where conflicts are identified SDS advise **tie** and **tie** decide the action required to bring about alignment (either a change to the Employer's Requirements or a change to the SDS design)

The SDS design and Infraco Proposals also need to align. This means that:-

- There should be no conflicts between the Infraco Proposals and SDS Design.
  - Where conflicts are identified SDS and BBS advise **tie** and **tie** decide the action required to bring about alignment (either a change to the Infraco Proposals or a change to the SDS design)
- 9.3 The steps to achieve this are:-
- BBS to advise the elements of system for which SDS design is not required. We believe that this applies principally to the systems. BBS have put forward technical proposals for various systems. SDS have produced specifications of varying levels of detail and system architecture drawings which are different and conflict with the BBS proposals. There seems little mileage in SDS revisiting their designs in these areas. BBS need to consider the extent and scope of ongoing SDS support they require to integrate their designs into the design for the whole Network, designs required to obtain planning (prior) approvals to the extent they relate to systems, ongoing performance modelling support required and the like.
  - The revised scope of designs to be agreed with SDS (This then to be added into the novation plan)
  - BBS to concurrently agree the alignment of their proposals with the Employer's Requirements (we await your fully marked up ERs and compliance matrix)
  - Once item 2 is settled SDS are to review and confirm alignment of their remaining design with the Employer's Requirements
  - BBS to identify any aspects of the remaining SDS design which do not align with their technical proposals. **tie** to then decide on the course of action and instruct accordingly.

- 9.4 The possible outcomes of the alignment exercise are:-
- Changes to the ERs are instructed by **tie** to ensure alignment with certain elements of the SDS design
  - Changes to the ERs are instructed by **tie** to ensure alignment with certain elements of the Infraco Proposals
  - Changes are instructed to the SDS Design to align with Employer's Requirements
  - Changes are required to the Infraco Proposals to align with the SDS design

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- Certain elements of the SDS design completed to date are agreed as redundant (they having been superceded by the Infraco Proposals as accepted by tie
- Changes are required to the Tramco Proposals to align with the Employer's Requirements
- Changes are required to the Employer's Requirements to align with the Tramco Proposals
- Changes are required to the SDS Designs to align with the Tramco Proposals

9.4 It is not necessary for the SDS Design to be amended to align by novation but that:-

- there is clear agreement on how the SDS Design needs to change (as listed in a schedule)
- there is clear agreement on where the SDS Design completed to date is redundant (as listed in a schedule)
- the programme for changing the design is agreed
- any necessary Changes under the SDS contract are agreed to effect amendments to the design to deliver alignment.

9.5 It is not expected that these changes will be extensive.

### 10.0 Programme for Novation

10.1 The programme for concluding the novation on the 28<sup>th</sup> January 2008 is:-

- Halcrow confirm agreement to provide collateral warranty by novation – 10<sup>th</sup> December 2007
- Agreement of terms of direct contract between tie and SDS by – 17<sup>th</sup> December 2007
- SDS provide draft documents to support the Disclosure Statement by – 20<sup>th</sup> December 2007
- SDS provide final documents to support Disclosure Statement by – 5<sup>th</sup> 3<sup>rd</sup> January 2008.
- SDS/tie/BBS sign novation agreement – 28<sup>th</sup> January 2008
- SDS/tie sign direct contract – 28<sup>th</sup> January 2008

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### 11.0 Agreement

11.1 tie, SDS and BBS confirm their agreement to this Plan.

.....  
Matthew Crosse  
tie

.....  
Steve Reynolds  
SDS

.....  
Richard Walker  
BBS



**SDS NOVATION PLAN**

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**APPENDIX A**

**COLLATERAL WARRANTY FROM HALCROW**

**COLLATERAL WARRANTY**  
between  
**(1) HALCROW Group Limited**  
- and -  
**(2) tie LIMITED**  
relating to  
**THE PROVISION OF DESIGN  
SERVICES FOR THE EDINBURGH  
TRAM NETWORK**

## **AGREEMENT BETWEEN**

- (1) **HALCROW Group Limited** (Company Number 03415971) whose registered office is at St. Andrew's Drive, Glasgow Airport, Paisley, PA3 2SW ("**the Consultant**");
- (2) **tie LIMITED** (Company Number SC230949) whose registered office is at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ ("**tie**") which term shall include its successors and permitted assignees); and

## **BACKGROUND**

- A By an agreement in writing dated 19 September 2005 (the "**SDS Agreement**"), **tie** appointed Parsons Brinckerhoff Limited (the "**SDS Provider**") to provide system design services in connection with the Edinburgh Tram Network.
- B PB appointed the Consultant to provide design services and technical and civil engineering expertise and support (the "**Services**") as PB's subconsultant pursuant to an agreement dated [◆] 2005 (the "**Halcrow/PB Agreement**").
- B It is a term of the SDS Agreement that the SDS Provider shall procure the provision of a Collateral Warranty in favour of **tie** Limited from the Consultant.

**IT IS AGREED** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following words and expressions have the following meanings, unless the context requires otherwise:

**"Agreement"** means this document (as amended from time to time pursuant to Clause 14);

**"Deliverables"** means the Functional Requirements Specifications, the Technical Specifications and the items listed in Appendix 3 to Schedule 1 (*Scope of Services*) of the SDS Agreement (as incorporated into the Halcrow/PB Agreement) and all consents, approvals, consent management plans, designs, building fixings designs, estimates, surveys (ground investigation and other), analysis, other documents, information, reports, records, diagrams, bills of quantities, manuals, schedules, databases, reinforcement details, photographs, formulae, consultation materials, plans,

designs, specifications, drawings (including as-built drawings), details, calculations, transport and other models and simulations, the outputs and reports based on any models, programmes and all other material created and/or provided by the Consultant in the performance of the Services and the Consultant's other obligations under the Halcrow/PB Agreement;

**"Infraco Contract"** means the contract to be entered into by **tie** with Bilfinger Berger UK Limited and Siemens plc (together the **"Infraco"**) in relation to the completion of the design, and carrying out the construction, commissioning and maintenance planning in respect of the Edinburgh Tram Network;

**"Intellectual Property Rights"** means any rights in or to any patent, design rights, utility model, trade mark, brand name, service mark, trade name, business name, logo, invention (whether registered or unregistered), domain name, semi-conductor right, topography right, software design, and/or other materials, source code, copyright, moral right or rights in databases and any other rights in respect of any industrial or intellectual property, whether capable of being registered or not, including all rights to apply for any of the foregoing rights or an extension, revival or renewal of any of the foregoing rights and any similar or analogous rights to any of the above, whether arising or granted under the laws of Scotland or of any other jurisdiction.

**"Novation Agreement"** means the novation agreement entered into among **tie**, the SDS Provider and the Infraco;

**"Party"** means each and any of the parties to this Agreement and Parties shall be construed accordingly.

1.2 Unless the context requires otherwise:

1.2.1 words importing:

1.2.1.1 the singular include the plural and vice versa; and

1.2.1.2 one gender include all other genders.

1.2.2 a reference to:

1.2.2.1 persons includes firms, companies, corporations, partnerships, trusts, authorities and other incorporated and/or unincorporated bodies; and

1.2.2.2 a recital, clause or schedule is a reference to a recital, clause or schedule of or to this Agreement;

1.3 The list of contents and clause headings in this Agreement are included for convenience only and do not affect its interpretation; and

1.4 Where a party comprises two or more persons:

1.4.1 any obligations on the part of that party contained or implied in this agreement are deemed to be joint and several obligations on the part of those persons; and

1.4.2 references to that party shall include references to each and any of those persons.

1.5 Unless otherwise defined hereunder, where the defines a meaning to any capitalised word or expression used in this Agreement, the same meaning shall be given to it in this Agreement;

1.6 In the case of any unintended and patent conflict between the definition or interpretation of words or expressions in this Agreement and the Halcrow/PB Agreement, the Halcrow/PB Agreement shall prevail save where by express words or where it is apparent from the context that the contrary is intended in this Agreement.

## 2. STANDARD OF CARE

The Consultant warrants and undertakes to **tie** that:

2.1 it has carried out and shall continue to carry out its Services and other duties and obligations under the Halcrow/PB Agreement subject to and in accordance with the terms thereof; and

2.2 in addition to and without derogation from clause 2.1;

2.2.1 the Consultant warrants to **tie** that, in the performance of the Services and its other obligations under the Halcrow/PB Agreement it has

exercised and shall exercise a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent system design services and technical and civil engineering services provider experienced in performing services similar to the Services in connection with projects of a similar size, scope and complexity to the Edinburgh Tram Network; and

2.2.2 it owes a duty of care to **tie** in carrying out its duties, obligations and scope of services under the Halcrow/PB Agreement in terms of 2.2.2 above.

### 3. COPYRIGHT LICENCE

- 3.1 The Consultant hereby grants to **tie** an irrevocable, perpetual, royalty-free and non-exclusive licence to use any and all of its own Intellectual Property Rights contained the Deliverables as may be necessary for **tie** to use in relation to any projects associated with the Services. This licence shall carry the right to grant sub-licences, and be freely transferable to third parties. The Consultant shall be liable for any claims arising from the use by **tie** of such intellectual property rights only to the extent that they are used by **tie** for the purposes for which they were intended.
  - 3.2 In so far as ownership of the copyright and any other Intellectual Property Rights in any Deliverable prepared or provided by the Consultant in connection with the Edinburgh Tram Network is vested in any person other than the Consultant, the Consultant shall procure for **tie** the benefit of such a licence as is referred to in clause 3.1 for the purposes referred to therein.
  - 3.3 The Consultant shall, if so requested at any time, execute such documents and perform such acts (including the grant to **tie** of a licence to use any Consultant software and/or any third party software and/or any specially written software) as may be required fully and effectively to assure to **tie** or any third party the rights referred to in this clause 3.
  - 3.4 The Consultant shall provide to **tie** a copy of any of the Deliverables as soon as reasonably practicable after receipt by the Consultant of a written request from **tie** to do so.
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3.5 The Consultant undertakes to **tie** that the use by **tie** of any of the Deliverables for any purpose provided for in this clause 3 shall not infringe the rights of any third party in relation to the Deliverables.

#### 4. REQUIRED INSURANCES

4.1 The Consultant undertakes that:

4.1.1 it has maintained and shall maintain during the performance of its obligations under the Halcrow/PB Agreement all insurance cover in accordance with the requirements of the Halcrow/PB Agreement;

4.1.2 cover (and insured parties) under its professional indemnity insurance is fully underwritten and extended to include the Consultant's liabilities under this Agreement;

4.1.3 this Agreement has been disclosed to the Consultant's current professional indemnity insurers or brokers (as the case may be) and shall be disclosed to any future professional indemnity insurers or brokers providing the insurance required by this Agreement; and

4.1.4 the Consultant shall abide by the terms and conditions of the relevant insurance and not do or omit to do anything that might prejudice the cover or its right to make a claim or prejudice its right to make a claim under its insurances maintained pursuant to the Halcrow/PB Agreement.

4.2 As and when required by **tie**, the Consultant shall produce for inspection documentary evidence that such insurance is being properly maintained.

4.3 The Consultant shall at times maintain insurance to comply with its obligations to carry insurance cover following completion of the Services.

#### 5. ASSIGNATION

5.1 The Consultant shall not assign, novate or otherwise transfer the whole or any part of this Agreement without the prior written agreement of **tie**.

5.2 **tie** shall be entitled to assign, novate or otherwise transfer the whole or any part of this Agreement:

- 5.2.1 to the Scottish Ministers or City of Edinburgh Council or 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
  - 5.2.2 to any other person whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Consultant) by **tie** or a person falling within clause 5.2.1; or
  - 5.2.3 to Transport Edinburgh Limited; or
  - 5.2.4 with the prior written consent of the Consultant (such consent not to be unreasonably withheld or delayed).
  - 5.2.5 on the basis of a co-beneficiary with **tie** Limited, to the Infraco, in the event that the SDS Agreement is novated by **tie** to Infraco, and at that date.
- 5.3 The Consultant undertakes to **tie** not to contend in any legal or court proceedings under this Agreement that any person to whom **tie** assigns or has assigned its rights under this Agreement or any of them in accordance with the foregoing provisions of this clause is to be precluded from recovering any loss resulting from any breach of this Agreement (whenever happening) by reason that (i) such person is an assignee and not the original contracting party under this Agreement, or (ii) **tie** is named under this Agreement and any intermediate assignee of **tie** escaped loss resulting from such breach by reason of the disposal of its interest in the same.

## 6. LIABILITY OF THE CONSULTANT

- 6.1 No provision of this Agreement is intended to exclude any obligation or liability which would otherwise be implied whether by law of contract, delict or otherwise.
  - 6.2 The responsibility of the Consultant under this Agreement is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person notwithstanding that such enquiry or inspection may give rise to a claim by **tie** against a third party.
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6.3 The rights and benefits conferred upon **tie** by this Agreement are in addition to any other rights and remedies that **tie** may have against the Consultant including (without prejudice to the generality of the foregoing) any remedies in delict.

6.4 Subject to the other provisions of this Agreement, the liability of the Consultant to **tie** is to be determined in all respects in accordance with the terms of the Halcrow/PB Agreement and, in the event of any claim by **tie** under this Agreement, the Consultant shall be entitled to rely upon any defence, right, limitation or exclusion under the Halcrow/PB Agreement as though **tie** were named as Client under it, except that:

6.4.1 **tie** shall not be affected by any subsequent variation of the Halcrow/PB Agreement which would adversely affect the obligations owed by the Consultant or the waiver, compromise or withdrawal of any claim made by the Infraco; and

6.4.2 the Consultant shall not be entitled to exercise any right of set-off, retention or withholding against **tie** to which the Consultant may be entitled as against the SDS Provider.

6.5 The liability of the Consultant under this Agreement shall be no greater in extent than the liability of the Consultant under the Halcrow/PB Agreement.

## **7. NOTICES**

7.1 Any notice required to be given under this Agreement is to be hand delivered or sent by prepaid registered or recorded delivery post to the party concerned at its address set out in this Agreement or to such other addresses as may be notified by such party for the purposes of this clause.

7.2 Any notice given pursuant to this clause, if sent by registered or recorded delivery, is deemed to have been received 48 hours after being posted.

## **8. RIGHTS OF THIRD PARTIES**

8.1 Save as in accordance with Clause 5, a person who is not a party to this Agreement shall have no right to enforce any term of this Agreement save through the operation of Clause 5 (*Assignment*).

**9. INVALID TERMS**

9.1 If any term of this Agreement shall be held to any extent to be invalid, unlawful or unenforceable:

9.1.1 that term shall to that extent be deemed not to form part of this Agreement; and

9.1.2 the validity and enforceability of the remainder of this Agreement shall not be affected.

**10. VARIATIONS AND WAIVERS TO BE IN WRITING**

10.1 No variation, alteration or waiver of any of the provisions of this Agreement shall be effective unless it is in writing and signed by or on behalf of the Party against which the enforcement of such variation, alteration or waiver is sought.

**11. WAIVER**

11.1 Save where expressly stated, no failure or delay by either Party to exercise any right or remedy in connection with this Agreement shall operate as a waiver of it or of any other right or remedy nor shall any single or partial exercise preclude any further exercise of the same, or of some other right or remedy. A waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

11.2 The Parties' rights and remedies under this Agreement are, except where provided otherwise in this Agreement, independent, cumulative and do not operate to exclude one another or any rights or remedies provided by law.

**12. JURISDICTION AND LAW**

12.1 This Agreement is governed by and is to be construed according to Scots law and the Scottish courts shall have jurisdiction in relation to all matters arising under it.

12.2 The Parties agree that any dispute in relation to this Agreement shall be conducted in accordance with Clause ◆ (*Dispute Resolution Procedure*) of the Halcrow/PB Agreement and the provisions of the said Clause ◆ are deemed to be incorporated mutatis mutandis in respect of this Agreement

provided that any reference to "Parties" shall be deemed to refer to **tie** and the Consultant, any reference to "Client" shall be deemed to refer to **tie**.

**IN WITNESS WHEREOF** these presents on this and the preceding **◆** pages are executed as follows:

**EXECUTED** for and on behalf of  
**HALCROW PLC** at

on \_\_\_\_\_ 2005 by:

Director/Authorised Signatory \_\_\_\_\_

Full Name \_\_\_\_\_

Witness Signature \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

Director/Authorised Signatory \_\_\_\_\_

Full Name \_\_\_\_\_

Witness Signature \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

**EXECUTED** for and on behalf of **tie**  
**LIMITED** at

on \_\_\_\_\_ 2005 by:

Authorised Signatory \_\_\_\_\_

Full Name \_\_\_\_\_

Witness Signature \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

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**APPENDIX B**

**SCOPE OF DIRECT CONTRACT BETWEEN TIE AND SDS**



**APPENDIX C**

**PRICING SCHEDULE DIRECT CONTRACT BETWEEN TIE AND SDS**

APPENDIX B - PRICING SCHEDULE

Summary

Traffic Regulation Orders	£
Wider Area Traffic Measures	£
Utilities Design	£
*Future Extensions to Network	£0.00
*Provisional Additional Work	£0.00
<i>Total</i>	£

\*In the event that additional work is instructed this shall be valued in accordance with Clause 15 of The Agreement

EDINBURGH TRAMWAY SDS PRICING SCHEDULE

Traffic Regulation Orders

Provide technical support and advice, including but not limited to feasibility, preliminary, detailed design and obtaining all ancillary consents, necessary to enable tie and CEC to obtain core traffic regulation orders ( TRO's ), obtain TRO's for wider are	£
Airport/Ingliston Park and Ride	
Ingliston Park and Ride/Gogarburn Depot Halt	
Gogarburn Depot Halt/Gyle/Depot/Connections	
Gyle/Depot/Connections/Edinburgh Park	
Edinburgh Park/South Gyle	
South Gyle/Soughton Road	
Soughton Road/Balgreen Road	
Balgreen Road/Murrayfield	
Murrayfield/Haymarket	
Haymarket/Shandwick Place	
Shandwick Place/Prince Street West	
Prince Street West/Waverley Bridge	
Waverley Bridge/St Andrews Square	
St Andrews Square/Picardy Place	
Picardy Place/Macdonald Road	
Macdonald Road/Balfour Street	
<i>Page Totals £ Carried Forward</i>	



**Traffic Regulation Orders ( Continued )**

	£
<i>Page Totals £ Brought Forward</i>	
Balfour Street/Foot of Walk	
Foot of Walk/Constitution Street	
Constitution Street/Ocean Drive	
Ocean Drive/Ocean Terminal	
Roseburn Junction/Roseburn (Part Tram Stop)	
Roseburn/Ravelston Dykes	
Ravelston Dykes/Craigleith	
Craigleith/Western General Hospital	
Western General Hospital/Crewe Toll	
Crewe Toll/West Granton	
West Granton/Caroline Park	
Caroline Park/Granton Waterfront	
Granton Waterfront/Granton Square	
Granton Square / Lower Granton Road	
Lower Granton Road / Newhaven Road	
Newhaven Road / Ocean Terminal	
Ingliston West/Newbridge	
Gogarburn Depot	
<i>Total Carried to Summary</i>	

EDINBURGH TRAMWAY SDS PRICING SCHEDULE

Wider Area Traffic Measures

Sector	Provide technical support and advice, including but not limited to feasibility, preliminary, detailed design for wider area traffic measures including those outside the LOD and LLAU, which are necessary to enable the traffic system in Edinburgh to operat	£
ARP1	Airport/Ingliston Park and Ride	
ARP1	Ingliston Park and Ride/Gogarburn Depot Halt	
DHY1	Gogarburn Depot Halt/Gyle/Depot/Connections	
DHY2	Gyle/Depot/Connections/Edinburgh Park	
DHY3	Edinburgh Park/South Gyle	
DHY4	South Gyle/Soughton Road	
DHY5	Soughton Road/Balgreen Road	
DHY5	Balgreen Road/Murrayfield	
DHY6	Murrayfield/Haymarket	
HOT1	Haymarket/Shandwick Place	
HOT1	Shandwick Place/Prince Street West	
HOT1	Prince Street West/Waverley Bridge	
HOT1	Waverley Bridge/St Andrews Square	
HOT1	St Andrews Square/Picardy Place	
HOT2	Picardy Place/Macdonald Road	
HOT2	Macdonald Road/Balfour Street	
<i>Page Totals £ Carried Forward</i>		

Wider Area Traffic Measures ( Continued )

Sector		£
	<i>Page Totals £ Brought Forward</i>	
HOT2	Balfour Street/Foot of Walk	
HOT3	Foot of Walk/Constitution Street	
HOT3	Constitution Street/Ocean Drive	
HOT4	Ocean Drive/Ocean Terminal	
HCT	Roseburn Junction/Roseburn (Part Tram Stop)	
HCT	Roseburn/Ravelston Dykes	
HCT1	Ravelston Dykes/Craigleith	
HCT1	Craigleith/Western General Hospital	
HCT1	Western General Hospital/Crewe Toll	
CTO1	Crewe Toll/West Granton	
CTO1	West Granton/Caroline Park	
CTO1	Caroline Park/Granton Waterfront	
CTO1	Granton Waterfront/Granton Square	
CTO2	Granton Square / Lower Granton Road	
CTO2	Lower Granton Road / Newhaven Road	
CTO2	Newhaven Road / Ocean Terminal	
GNB2	Ingliston West/Newbridge	
	Gogarburn Depot	
	<i>Total Carried to Summary</i>	

**EDINBURGH TRAMWAY SDS PRICING SCHEDULE**

**Utility Designs**

Sector	Provision of utility designs in accordance with Schedule 1 including general technical support and on-site support for these works and in accordance with any Changes in respect of utility designs	£
ARP1	Airport/Ingliston Park and Ride	
ARP1	Ingliston Park and Ride/Gogarburn Depot Halt	
DHY1	Gogarburn Depot Halt/Gyle/Depot/Connections	
DHY2	Gyle/Depot/Connections/Edinburgh Park	
DHY3	Edinburgh Park/South Gyle	
DHY4	South Gyle/Soughton Road	
DHY5	Soughton Road/Balgreen Road	
DHY5	Balgreen Road/Murrayfield	
DHY6	Murrayfield/Haymarket	
HOT1	Haymarket/Shandwick Place	
HOT1	Shandwick Place/Prince Street West	
HOT1	Prince Street West/Waverley Bridge	
HOT1	Waverley Bridge/St Andrews Square	
HOT1	St Andrews Square/Picardy Place	
HOT2	Picardy Place/Macdonald Road	
HOT2	Macdonald Road/Balfour Street	
<i>Page Totals £ Carried Forward</i>		

Utility Designs ( Continued )

Sector		£
	<i>Page Totals £ Brought Forward</i>	
HOT2	Balfour Street/Foot of Walk	
HOT3	Foot of Walk/Constitution Street	
HOT3	Constitution Street/Ocean Drive	
HOT4	Ocean Drive/Ocean Terminal	
HCT	Roseburn Junction/Roseburn (Part Tram Stop)	
HCT	Roseburn/Ravelston Dykes	
HCT1	Ravelston Dykes/Craigleith	
HCT1	Craigleith/Western General Hospital	
HCT1	Western General Hospital/Crewe Toll	
CTO1	Crewe Toll/West Granton	
CTO1	West Granton/Caroline Park	
CTO1	Caroline Park/Granton Waterfront	
CTO1	Granton Waterfront/Granton Square	
CTO2	Granton Square / Lower Granton Road	
CTO2	Lower Granton Road / Newhaven Road	
CTO2	Newhaven Road / Ocean Terminal	
GNB2	Ingliston West/Newbridge	
	Gogarburn Depot	
	<i>Total Carried to Summary</i>	

EDINBURGH TRAMWAY SDS PRICING SCHEDULE

Provisional Additional Work

Provisional Additional Work	Hours	Rate	Amount £
Provisional Additional Work shall only have authority for payment and execution when instructed by the, or authorised the Representative prior to the work being carried out. The values contained in this section shall be deducted if not instructed by the.T			
Senior Designer		£78.00	
Principle Designer		£95.00	
Graduate Designer		£55.00	
Senior CAD Technician		£49.00	
CAD Technician		£38.00	
Technical Support		£38.00	

**APPENDIX D**

**PROGRAMME - DIRECT CONTRACT BETWEEN TIE AND SDS**

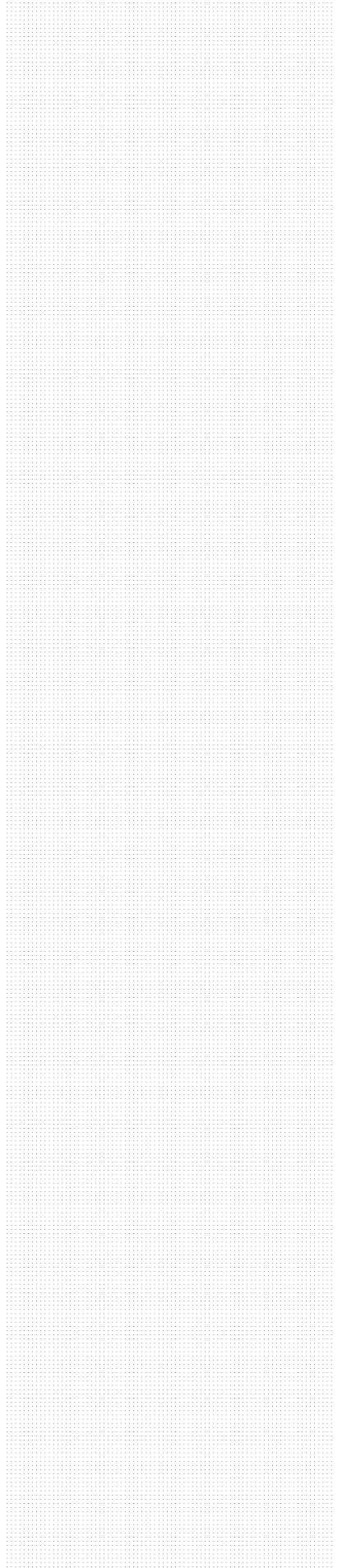
**APPENDIX E**

**SDS DESIGN DELIVERABLES STATUS, CONSENTS, PROGRAMME**



## Consents Being Obtained by SDS

Railways and Aviation	HMRI	HMRI	Ongoing process with HMRI
	Network Rail	Network Rail	Ongoing negotiations with NR
	BAA/Aviation Consents	BAACAA/NATS	Ongoing negotiations with BAA
Planning	Listed Building Consent	CEC Planning Authority	
	Prior Approval	CEC Planning Authority	
	Planning Permission	CEC Planning Authority	
	Conservation Area Consent	CEC Planning Authority	Not applicable within LoD
	Scheduled Monument Consent	Scottish Executive & Historic Scotland	
	Advertisement Consent	CEC Planning Authority	Information signs "deemed consent"
Traffic Management	Road Construction Consent	CEC Roads Authority	
Environment Ecological	Badger Licence	Scottish Natural Heritage	Environmental Team
	Otter holt/disturbance licence	Scottish Natural Heritage	
	Bat Licence	Scottish Natural Heritage	
	Appropriate Assessment	Competent Authority	
Drainage CAR	CAR General Binding Rules	SEPA	
	CAR Registration	SEPA	
	CAR License	SEPA	
	Water/ Wastewater Connection	Scottish Water	
Construction	Technical Approval	CEC Bridges/ CEC Roads	
	Building Warrant	CEC Building Standards	
Radio	OFCOM license	OFCOM	
Design Consultation	Third Party Design Consultation		
Undertakings	Undertakings to Parliament	n/a	Undertakings and Agreements to Parliament and with 3rd parties that must be met
Agreements	Agreements with 3rd Parties	n/a	
Letter of Comfort	Letter of comfort	n/a	
Letter of Closure	Letter of Closure	n/a	



**APPENDIX F**

**SUMMARY OF FINANCIAL POSITION**



