

**Transport Edinburgh Limited (TEL) and tie Limited
Checklist of compliance with Conditions of Operating Agreements w/ CEC - May 2010**

OA Ref	CONDITION	EXEC TEAM MONITOR	NOTES ON PROCESS & COMPLIANCE
	<p>TEL OA Dec 09 (Obligations of TEL are in practice often met by tie or ETL)</p>		
2.2	<p>TEL shall ensure that all third party advisers and contractors engaged by it shall provide a direct duty of care to the Council in terms acceptable to the Council prior to carrying out any work in relation to the Project, failing which the appointment of any such third party will require the written approval of the Tram Monitoring Officer.</p>	Steven Bell	<p>Addressed as part of contract conditions fully since 2009. Proposal to regularize historical items submitted to TMO 20/1/10 (INF CORR 3198). Follow up information provided regarding Contract values and durations. TMO confirmed by email on 13/5/10 he is content this meets OA requirements and no further action required. Information including duration and value of contract will be updated and sent to TMO every May.</p>
2.14	<p>TEL shall at all times maintain in place appropriate policies of insurance in relation to all elements of its business and in particular the Project. TEL shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms.</p>	Susan Clark	<p>All insurances maintained by a duly appointed Insurance Manager. No change or cessation of insurances has taken place.</p>
2.15	<p>TEL shall ensure that all contractors and consultants engaged or employed by it in any capacity shall have in place a policy of insurance providing TEL with appropriate indemnity for all risks relevant to their engagement. TEL shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms.</p>	Susan Clark	<p>See answer to 2.2 above.</p>
2.16	<p>TEL will ensure that the Corporate Public & Products Liability and Professional Indemnity policies are to include an indemnity to principals clause protecting the interest of the Council as principal.</p>	Susan Clark	<p>Confirmed that both of these policies include an indemnity to principals clause.</p>
2.17	<p>TEL shall provide to the Tram Monitoring Officer upon request, and in any event not less than annually, a report providing full details of all its insurances, including <i>inter alia</i> details of (i) the contractors or consultants providing insurance cover to TEL and the Council and level of cover provided; and (ii) contractors or consultants not providing insurance cover and details of the authorisation obtained from the Tram Monitoring Officer in this regard.</p>	Susan Clark	<p>Annual statement of insurances provided to TMO and Principal Finance Officer on 18/5/10. Information will be updated and sent every May.</p>
2.19	<p>TEL shall continue to apply principles of good corporate governance and to adopt and adhere to the Council's Code on Corporate Governance (approved by the Council on 29 June 2006) as it may be amended from time to time.</p>	Stewart McGarrity	<p>Annual review of Corporate Governance reported to CEC Internal Audit on 14/5/10 including Ph1 reorganisation completed in Dec 09. Internal Audit of Governance completed by Deloitte in early 2009. Annual review of Corporate Governance will be updated and sent to CEC every May.</p>

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2.5	The TEL board shall establish such sub-Committees as it deems appropriate and necessary for the proper execution of its responsibilities and will seek to procure, with the approval of the Chief Executive of the Council, that the Board is composed of directors employing the requisite blend of skills, experience and aptitudes.	Stewart McGarrity	Committees now consist of TPB, Remuneration Committee, Audit Committee and H&S committee. TPB has 2 sub-committees - Financial Commercial and Legal Committee and Business Realisation and Operational Readiness Committee. All committees operating under agreed remits. Board and board committee nominations/appointments are managed by the Chairman in consultation with CEC senior officers.
2.20	TEL will supply to the Tram Monitoring Officer copies of all relevant TEL and other board papers in connection with the governance arrangements set out in Schedule 2 [This reference is to Schedule 2 of the Operating Agreement, not repeated here, but which reflect the governance model presented separately to the TEL Board]	Stewart McGarrity	TMO provided with all papers presented to the Board Sept and Dec 09 relevant to the Phase 1 changes in corporate structure.
2.22	TEL shall establish the Tram Project Board as a Committee of the TEL Board and shall define the responsibilities of the TPB and shall delegate appropriate authority to the TPB to enable the TPB to carry out its responsibilities in accordance with the terms of this Agreement.	Richard Jeffrey	TPB already in existence. TEL has effectively delegated it authority under the Operating agreement (up to the notified Baseline Cost and Baseline Date) to the TPB.
2.22	<p>The following matters will be for the TEL Board to determine and report to the Council as appropriate in terms of the governance arrangements set out in Schedule 2:</p> <p>All matters affecting the programme, cost and scope of the Project except the following which are matters reserved to the Council:</p> <p>(i) any actual or reasonably expected delay beyond 3 months after the Baseline Date; or (ii) any actual or reasonably expected increase in capital cost which would mean that the Baseline Cost is exceeded by greater than £1,000,000; or (iii) any substantial change to the design, scope or service pattern set out in the Final Business Case.</p> <p>On the basis of information provided by TEL to the Council, the Baseline Date and the Baseline Cost will be determined by the Council's Chief Executive and notified to TEL from time to time. The Council Chief Executive will require Council approval to specify (i) a Baseline Date beyond October 2012; or (ii) a Baseline Cost exceeding £545 million. In assessing the source of actual or potential cost increases, the Board of TEL will use best endeavours to ensure that all financial claims are taken properly into account.</p>	Richard Jeffrey	<p>All operated in accordance with reserved CEC / TEL matters and in accordance with the Delegated Authority Rules which govern the tram delivery activities of all of TEL, tie and ETL.</p> <p>TEL has delegated authority within these limits to Tram Project Board. The Baseline Date and Baseline Cost as notified in writing by the Council Chief Executive to the Chairman of TEL on 23/12/09 as October 2012 and £545m respectively.</p> <p>Uncertainties over programme and resolution of disputes have made it impossible to determine any final cost – full briefings on range of possible outcomes provided as part of briefings to CEC senior officers (and to TS as funders) and in the Pitchfork report to the Board of March 2010.</p> <p>CEC Officers report to Council in June 2010 will conclude that it can be reasonable expected to exceed £545m to deliver the whole of Phase 1a but adequate certainty will not be achieved by then. Oct 2012 OFRS date cannot be discounted yet.</p>

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2.22	TEL may delegate responsibility for all the matters specified above (other than the matters reserved to the Council) to the TPB and the TPB may in turn delegate responsibility for all other matters to tie as appropriate, but only to the extent that such delegation is already within the remit of tie in the context of the tie Operating Agreement. TEL agrees that it shall retain ultimate responsibility for all matters it so delegates.	Stewart McGarrity	Delegations from TEL through the chain to the PM teman are all codified in the Edinburgh Tram Delegated Authority Rules (DARs) which govern the tram delivery activities of all of TEL, tie and ETL.
2.23	TEL shall liaise with the Tram Monitoring Officer, the Council, and any other bodies which the Council may specify, regularly and shall report to the Council on a four-weekly and annual basis with regard to financial matters and progress generally on the Project in a format acceptable to the Council. TEL will liaise with the Council and tie to ensure that duplication in reporting procedures is minimized.	Steven Bell	A weekly TMO report has been provided together with four weekly Tram Project report (TS Report). The Period 13 report includes the annual 2009/10 summary. This has been produced to the templates agreed with the TMO and / or Transport Scotland and CEC. tie Chief Executive also provides political Group Leaders briefings on a regular basis.
2.24	Immediately that TEL becomes aware of the likelihood of delay to, or overspend in, the Project it will ensure that notification is given to the Tram Monitoring Officer at the earliest opportunity, informing them of the reasons for the potential delay or overspend and detailing any measures (together with costs) which may mitigate such potential delay or overspend.	Steven Bell / Richard Jeffrey	Undertaken through briefings and reports to the Tram Project Board (eg Pitchfork) and on a regular basis directly with the TMO and other senior officers of CEC. AC – Concern over FCL role in this. Briefings work but are very informal. TPB Reports say nothing! CEC Officers do receive Financial Updates on a regular basis from tie FD.
2.25	Immediately TEL becomes aware that it requires a decision or information essential to the continuity of the Project from the Council to achieve key dates in the Project, TEL shall give notice of such requirement to the Tram Monitoring Officer with full supporting information to mitigate any delay to the Project to the fullest extent possible. All relevant tie remuneration matters will be monitored and controlled by the Remuneration Committee of the TEL Board.	Steven Bell	Undertaken via the TPB and/or directly with the TMO. All tie remuneration matters now fall within the remit of the TEL Audit Committee.
2.26	TEL shall procure that TEL and tie shall develop and have approved by the TEL board a remuneration policy setting out <i>inter alia</i> the benchmarks and procedures for proposed bonus achievement and the project milestone outcomes to which any such bonuses are linked. Such policy for both TEL and tie shall require to be approved by the TEL board, through its Remuneration Committee, in advance of each annual reporting period as it will apply in the succeeding annual reporting period. Notwithstanding that it has already commenced, the first such period will be Financial Year 09/10.	Richard Jeffrey	
2.26	TEL shall ensure that both TEL and tie's performance bonus incentive arrangements are aligned to appropriate Project milestones and reflect performance achievements beyond the level that might reasonably be expected of individual staff in fulfilling their assigned job roles	Richard Jeffrey	

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2.26	The remuneration policy principles to be adopted by TEL's Remuneration Committee each year for both tie and TEL will also require to be approved by the Council's Chief Executive in advance of each annual reporting period. In addition to annual approval by the Council Chief Executive, a full review of TEL and tie's remuneration strategy by the Council Chief Executive will take place every three years to ensure that such strategy remains appropriate in the market from time to time.	Richard Jeffrey	Report on remuneration policy principles to be adopted by TEL's Remuneration Committee to be submitted to Council's Chief Executive on an annual basis.
2.27	The setting and any alteration of the remuneration packages, including performance bonus incentive arrangements, for the Chairman of TEL and tie respectively will require the prior approval of the Chief Executive of the Council. The remuneration package, including performance bonus incentive arrangements, for the Chief Executive of TEL and tie will, on appointment, require approval by the Chief Executive of the Council and thereafter any changes will be determined by the Chairman of tie or TEL as the case may be, all subject to approval of the Remuneration Committee of the TEL Board.	Richard Jeffrey	Report on remuneration policy principles to be adopted by TEL's Remuneration Committee to be submitted to Council's Chief Executive on an annual basis.
2.28	TEL will provide a business plan for approval by the Council on an annual basis. TEL will incorporate within its annual business plan a full business plan for tie.	Stewart McGarrity / Alastair Richards	With agreement of CEC officers the first annual TEL Business Plan (incorporating tie and ETL) will be submitted late in 2010 following resolution of BSC uncertainties and then annually thereafter.
2.30	TEL shall not novate or otherwise transfer any rights or obligations under any contractual arrangement which the Council has approved and to which TEL is a party without the prior written consent of the Tram Monitoring Officer.	Steven Bell	TMO and TPB would be fully appraised of any such proposal - in any case there have not been any. TMO will be provided with full detail of any such arrangements prior to written approval being sought.
2.32	TEL shall liaise regularly with tie and the Council in the execution of publicity and communications arrangements.	Mandy Haeburn-Little	Regular comms between MHL and Isobel Reid. tie have now appointed Lynn McMath as Head of Media whose role includes close liaison with the Council and will monitor adherence to their policies and procedures as appropriate. This includes a weekly meeting with head of Communications at CEC.
2.33	TEL acknowledge that tie and the Project will be subject to an independent peer review panel concerning the management of the Project (including all the contract documentation) and TEL will implement all reasonable recommendations of the panel once approved under the governance arrangements set out in Schedule 2.	Richard Jeffrey	A Peer Review group was engaged to review OGC stage-gates (eg up to contract) and since the same individuals have been regularly engaged in an advisory basis on BSCdisputes etc. TEL (and tie) will comply with any future CEC requirement for independent peer review.

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tie OA May 05 – Surviving matters reserved to CEC		
<p>Except with the consent in writing of the Council tie shall not:</p> <ul style="list-style-type: none"> • 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; • Borrow or raise any sum of money other than in the ordinary and proper course of its business; • Make any loan or advance or give any credit to any person, other than in the normal course of business; • Give any guarantee or indemnity to secure the liabilities or obligations of any person; • 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; • 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; • Acquire, purchase or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any company, trust or other body; • Register any transfer of shares in the capital of the Company; • Appoint any person as Chief Executive or Chief Finance Officer of the Company; • Enter into any partnership or profit sharing agreement with any person; • 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. 	<p>Stewart McGarrity</p>	<p>All green items are financially orientated and prohibited by DARs (ie nobody has authority to enter into such arrangements on behalf of tie. Also no such arrangement disclosed by annual internal or external audit.</p> <p>Other two items:</p> <ul style="list-style-type: none"> • Appointment of Richard Jeffrey as CEO of tie and appointment to Board was approved by full Council • Due to slippage in programme we fell considerably short of the expenditure forecast in the tie 09/10 Business Plan.