

AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL, the local authority for the City of Edinburgh in terms of the Local Government etc. (Scotland) Act 1994, having its principal office at Council Headquarters, Waverley Court, East Market Street, Edinburgh, EH8 8BG, or its statutory successors (“**the Council**”)

and

tie Limited, a company incorporated under the Companies Acts (registered number SC230949) and having its Registered Office at City Chambers, High Street, Edinburgh, EH1 1YJ (“**tie**”)

Whereas:-

1. The Council set up tie in [May 2002] to assist the Council with implementing its local transport strategy;
2. Powers were conferred upon the Council in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network in terms of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006;
3. The Council is the designated planning and roads authority for the City of Edinburgh;
4. In [2003], the Council appointed tie to facilitate the delivery and operation of the proposed tram system for Edinburgh;
5. A general operating agreement between tie and the Council was entered into in September 2005 whereby tie agreed to provide services to the Council in developing, procuring and implementing integrated transport projects within Edinburgh; and

6. The parties now wish to enter into this agreement to more particularly regulate the relationship between the parties specifically with regard to the procurement and delivery of the trams Project.

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

1 Definitions

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

| | |
|------------------------------|---|
| “Agreement” | means this agreement (including the schedules to it), as it may be amended from time to time; |
| “Company Monitoring Officer” | means the Council Officer nominated by the Council to monitor the Company; |
| “Edinburgh Tram Line One” | means []; |
| “Edinburgh Tram Line Two” | means []; |
| “Final Business Case” | means []; |
| “Funding Agreement” | means the Council-accepted grant offer letter from Transport Scotland to the Council dated []; |
| “Legislation” | means all rules, regulations, by-laws, directives, statutes and other binding provisions in force from time to time; |
| “Project” | [means the procurement and delivery of a tram system for Edinburgh (Edinburgh Tram Line One and Edinburgh Tram Line Two), as more particularly described in the Final Business Case] [TBC]; and |
| “Services” | means the services, service levels and specification of services set out in the schedule to this Agreement, or as otherwise agreed in writing between the parties from time to time. |

- 1.2. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of it.
- 1.3. In this Agreement, references to clauses are, unless otherwise provided, references to clauses of this Agreement and references to schedules are references to the appropriate schedules to it.
- 1.4. In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice-versa.

2. tie's Obligations

- 2.1 tie hereby agree to provide the Services to the Council throughout the duration of this Agreement in order to assist in, carry out, promote, manage and administer the Project.
- 2.2 tie 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.
- 2.3 tie shall comply with the terms of the Final Business Case.
- 2.4 tie shall ensure that it is at all times suitably resourced to carry out all the Services in relation to the Project.
- 2.5 tie shall ensure that it complies at all times with the terms of the Funding Agreement and ensure that, where it acts on the Council's behalf, it ensures that the Council complies with such terms at all times.
- 2.6 tie shall ensure that it complies with and, where it acts on the Council's behalf, ensure that the Council complies with, all Legislation (including all health and safety legislation) relevant to the Project at all times.
- 2.7 tie shall ensure that it does not infringe the intellectual property rights of any third party at any time.
- 2.8 tie shall use, and shall procure that all contractors, employees and other third parties which it engages shall use, [*the highest level of*][*all reasonable*] skill, care and diligence in the provision of the Services. All work undertaken by tie shall be progressed with due expedition and without delay to achieve timeous completion of the Project.

- 2.9 tie shall discharge all its obligations in terms of this Agreement in a proper, commercial, honest, faithful and diligent manner and shall at all times act in the best interests of the Council (to the fullest extent permitted by law).
- 2.10 Insofar as permitted by law, tie shall at all times promptly comply with all reasonable requests made of it by the Council.
- 2.11 tie shall at all times maintain in place appropriate policies of insurance in relation to all elements of its business and in particular the Project and shall provide evidence of all such insurances upon request by the Council. [*tie to ensure that all insurance shall be in joint names so that the Council is covered?*]
- 2.12 tie shall ensure best value when providing the Services and in the discharge of all of tie's responsibilities. tie shall also ensure best value in the use of funds or resources provided through or by the Council.
- 2.13 tie shall apply principles of good corporate governance and 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.
- 2.14 tie shall allow the Council, its auditors or the Council's other delegated appointees to examine the books, accounts and other records kept by tie (and any subsidiary undertakings) and shall supply the Council with such financial and other information as it may reasonably request from time to time to keep the Council fully informed about the business of tie (and any subsidiary undertakings) and to protect the Council's interests in relation to the terms of this Agreement. tie will supply copies of all board papers to the Company Monitoring Officer.
- 2.15 tie shall ensure that it and all third parties it engages and/or contracts with to carry out any works shall at all times comply with all equalities legislation and shall act in a non-discriminatory manner.
- 2.16 tie shall liaise with the Council regularly and shall report to [the Council] on a monthly basis with regard to financial matters and [*TBC*].
- 2.17 Immediately that tie becomes aware of the likelihood of delay to the Project it shall notify the Council, informing it of the reasons for the delay and any measures (together with costs) which may mitigate such delay.
- 2.18 Immediately tie 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, tie shall give notice of such requirement to the Council with full supporting information to ensure that there is no delay to the Project.

- 2.19 tie shall not settle any claims in excess of [£50,000] without prior written approval from the Council.
- 2.20 [tie shall not appoint any employee with a remuneration over [£50,000] without approval from the Council.]
- 2.21 [tie shall not award any bonus to any employee without approval from the Council.][*TBC*]
- 2.22 [*Are tie to provide a business plan/report annually? – NB this agreement is solely tram*]

3. **Council's Obligations**

- 3.1 On the basis that tie has, in the opinion of the Council, provided adequate evidence that expenditure has been properly and appropriately incurred in relation to the provision of the Services and the Project, the Council will endeavour to secure funding for such expenditure and shall pass some or all of such funding, at its sole discretion, to tie to allow tie to discharge its obligations in terms of this Agreement.
- 3.2 [*Terms of appointments of Council officers/members to tie Board to be considered*].
- 3.3 The Council will nominate a Council officer to act as a liaison point for day-to-day communication between the Company and the Council.
- 3.4 The Council will appoint a Company Monitoring Officer.

4. **Term**

- 4.1 Notwithstanding the date of signing, this Agreement shall be deemed to have commenced on [1 May 2003] and shall continue until [completion of the Project][*TBC whether to be retrospective*], unless otherwise terminated earlier in accordance with its terms.

5. **Indemnity**

5.1 tie is wholly responsible for meeting timeously all obligations, liabilities or claims of whatsoever nature arising out of or in connection with the implementation of its obligations under this Agreement. tie shall indemnify the Council, its officers, employees and agents from and against all costs, expenses, actions, claims, demands and other liabilities which the Council or its officers, employees and agents may suffer which arise from tie, its employees or its other appointed representatives breaching the terms of this Agreement.

6. Termination

6.1 Either party may terminate this Agreement immediately by giving notice to that effect to the other if the other party is in material breach of its obligations and has failed to remedy that breach (assuming it is capable of remedy) within 14 days of receiving such notice.

7. Dispute Procedure

7.1 Any dispute or difference between the parties as to the meaning or intent of this Agreement or the implementation thereof or as to any other matter in any way arising out of or in connection with this Agreement shall be referred to the decision of an Arbiter to be mutually agreed between the parties or, failing agreement, to be appointed by the President for the time being of the Law Society of Scotland. The decision of such Arbiter shall be final and binding on both parties. The application of Section 3 of the Administration of Justice (Scotland) Act 1972 is hereby expressly excluded.

8. Transfer and Sub-contracting

8.1 This Agreement is personal to tie and tie shall not assign, novate, sub-contract or otherwise transfer by any means whatsoever any right or interest or obligation which it may have in or under this Agreement without the prior written consent of the Council.

8.2 For the avoidance of doubt, the Council shall be entitled to assign, novate or

otherwise dispose of its rights and obligations under this Agreement.

9. Notices

9.1 Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally, by fax or first class post. In the case of posting, such notice will be deemed to have been given three working days after the date of posting; in the case of fax, the next working day; and in the case of personal delivery, at the time of delivery. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or at any other address of fax number notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement.

10. Freedom of Information

10.1 The parties acknowledge that they will fully comply with, and will assist each other in complying with, the terms of the Freedom of Information (Scotland) Act 2002.

11. Nature of Relationship

11.1 This is an Agreement between two independent contracting parties and nothing in this Agreement shall create a relationship of agency or partnership between the parties with regard to its subject matter.

11.2 Nothing in the Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a local authority or in terms of any Legislation.

12. Entire Agreement and Variations

12.1 This Agreement and the attached schedules constitute the entire agreement between the parties in relation to their subject matter. Each party confirms that it has not relied upon any representation, undertaking or warranty not recorded in this document in entering into this Agreement. No variation of

this Agreement shall be effective unless confirmed in writing and signed by authorised signatories of both parties to this Agreement. This agreement supercedes any prior agreement in relation to its subject matter.

13. **Severability**

13.1 If any term of this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such term or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

14. **Waiver**

14.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided for in this Agreement) are not exclusive of any rights or remedies provided by law.

15. **Governing Law and Jurisdiction**

15.1 This Agreement is governed by the Laws of Scotland and the parties submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding [] pages and the attached Schedules are executed as follows:

Subscribed for and on behalf of The City of Edinburgh Council at _____ on
day of _____ 2007

Witness.....

Full Name.....
Proper Officer

Address.....
.....

Subscribed for and on behalf of tie Limited at _____ on _____ day of
2007

Director.....

Director/Secretary.....

SCHEDULE 1

[Terms and scope of “Services” to be provided by tie to the Council require to be comprehensively defined by City Development and Finance in this schedule]

Services provided to Financial Close

- Procurement of SDS, MUDFA, Infraco & Tramco
- Conclude Final Business Case

Services provided post-Financial Close

- Provide accurate information to TPB for appropriate decision making
- Manage the SDS, Mudfa, Infraco and Tramco contracts
- Risk Management
- JRC/Modelling Traffic Management
- Health & Safety assessments
- Design & Systems assurances
- Communications
- Value Engineering