

Draft 1

Date: [[20] September] 2010

GRANT OFFER TO CITY OF EDINBURGH COUNCIL FOR CONSTRUCTION OF THE
TRAMS ELEMENTS FORMING PART OF THE EDINBURGH GATEWAY PROJECT

SCHEDULE 1
TERMS AND CONDITIONS

1. **Conditions of Grant**

These are the Terms and Conditions reserved in the foregoing Letter to the Council.

2. **Definition and Interpretation**

2.1 In the foregoing Letter, this Schedule and the Annex:

Annex 1 means Annex 1 to this Schedule;

Annex 2 means Annex 2 to this Schedule 1, consisting of 4 parts;

Applicable Law means any regulation, Legislation, practice or concession or official directive, ruling, request, notice, guideline, statement of policy or practice by any relevant legislative authority, the European Union, governmental, local, international, national or other competent authority or agency (~~whether or not having the force of law~~ in respect of which compliance by tramway owners and operators is required; generally customary);

Business Day means any week day during which the Scottish Clearing Banks (or majority of them) are open for business;

Council means ~~the said~~ The City of Edinburgh Council;

Eligible Capital Costs shall be construed in accordance with Annex 1;

Eligible Capital Costs Allocation shall be construed in accordance with Annex 1;

Event of Default means the occurrence of the events or circumstances specified in Clause 13.1;

Final Grant Availability Date means [[] June 2012] or such later date as may be agreed between the Parties;

Financial Year means the period from 1 April in a calendar year up to and including 31 March in the following calendar year;

Funded Assets means heritable and moveable assets employed for the purposes of the Project which have, at any time, been funded in whole or in part from the Edinburgh Gateway Tram Works Grant and any replacements thereof;

Gogar Development Grant Agreement means the grant agreement entered into between the Council and the Scottish Ministers for the award of a grant of a maximum of £880,000 for the design and development of the trams elements of the

Gogar Interchange Project dated 26 and 28 May 2009 as subsequently extended by three letter agreements between the Council and the Scottish Ministers for additional the-sums up to a maximum of (1) £50,000; (2) £15,000; and (3) £245,000;

Edinburgh Gateway Trams Contracts means [insert details of key contracts relating to the Edinburgh Gateway tram stop, tram trackworks and retaining walls. This may also include the Interface Agreement dealing with the interdependencies between the rail works and the tram works]¹

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Edinburgh Gateway Tram Works Grant means the grant offered to the Council by the Scottish Ministers under Section 70 of the Transport (Scotland) Act 2001;

Grant Agreement or **Agreement** means the Letter, these Terms and Conditions and Annexes 1 and 2 and the Council's acceptance;

Instalment means an instalment of the Grant ascertained in accordance with Annex 2;

Intellectual Property Right means all rights of ownership, including all copyrights and other intellectual property rights in drawings, designs, manuals, books, leaflets and other printed materials in whatever form including all reports and any such materials stored in or made available by means of an information technology system and the computer software relating thereto and all patents, trademarks, registered designs and other rights in the nature of intellectual property;

Letter means the foregoing letter of offer of Edinburgh Gateway Tram Works Grant;

Project shall be construed in accordance with Clause 3;

Reports means the Reports specified in Annex 2; and

“**tie**” means tie Limited, incorporated under the Companies Acts (Company Number SC230949) and having its registered office at City Chambers, High Street, Edinburgh;

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“**TEL**” means Transport Edinburgh Limited, incorporated under the Companies Acts (Company Number SC269639) and having its registered office at 55 Annandale Street, Edinburgh;

“**Project**” means all work associated with or in connection to the construction, operation and maintenance of a new tram stop on Phase 1a at the Gogar Intermodal Station (otherwise known as Edinburgh Gateway) including, but not limited to, a new tram stop, tram track works, new retaining wall **[list other items]**;

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“**Phase 1a**” means that phase of the Edinburgh Tram Network which is currently under construction, being that phase of the Edinburgh Tram Network sometimes referred to as “Phase 1a” and which is a tramway system from Leith Waterfront (Newhaven) via Princes Street and Haymarket to Edinburgh Airport, or such alternative, longer or shorter route as that phase may comprise from time to time;

¹ Parties to discuss – there are key interdependencies between the rail and tram works. It is essential that these are recognised in this grant agreement and observed by the parties. Once discussions on the interdependencies are further developed, the appropriate mechanism for their incorporation into this document can be addressed – this may be through this definition or separate obligations linking in with a schedule of key milestones and deliverables.

Tram Grant Agreement means the grant agreement entered into between the Council and the Scottish Ministers dated 17 and 23 January 2008 for the award of a grant of a maximum of £500,000,000 for the construction of Phase 1 of the Edinburgh Tram Network.

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Third Party Arrangements means any contracts, agreements or other arrangements between the Council, TEL and/or TEL with parties other than [tram contractor] relating to or associated with the Projects;

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2.2 In the Agreement, except where the context otherwise requires:

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- (a) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (b) the headings in this Agreement are for convenience only and shall not be taken into account in their interpretation;
- (c) save as otherwise provided herein, any reference to a Clause or Paragraph shall be a reference to a Clause of this Schedule or a Paragraph of the Letter;
- (d) any reference to any Act of Parliament or any Act of the Scottish Parliament or any enactment of the European Parliament, the European Council or the European Commission having the force of law shall be construed as a reference to the Act of Parliament or Act of the Scottish Parliament or the enactment as from time to time amended, extended or re-enacted and to include any bylaws, statutory instruments, rules, regulations, orders, notices, directions, directives, consents or permissions made or given thereunder. Similarly, any reference to that statutory instrument, regulation or order shall be construed as a reference to that statutory instrument, regulation or order as from time to time amended, extended or re-enacted;
- (e) all references to agreements or documents include a reference to that agreement or document as amended or supplemented from time to time or to any replacement or superseding agreement, document;
- (f) any undertaking by either of the parties not to do any act or thing shall, so far as it is within the power of the relevant party, be deemed to include an undertaking not to allow, permit or suffer the doing of that thing;
- (g) any reference to "procure" shall mean to bring about or cause to happen;
- (h) any notice, instruction, notification, direction, request, consent or approval contemplated herein shall be made or given in writing;
- (i) expressions defined in the Companies Act 2006 shall have the same meaning in this Agreement; and
- (j) anything which may be done by the Scottish Ministers may be done by any person duly authorised by the Scottish Ministers for that purpose; and.

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(k) For the avoidance of doubt, should the Council establish one or more alternative organisations other than tie or TEL to assist in the delivery, construction, operation and maintenance of the Edinburgh Tram Network, including but not limited to the Project, and such organisations are approved by the Scottish Ministers, then an obligation upon the Council to procure tie and/or TEL carry out any act shall be fulfilled by the Council procuring any such organisations do so instead, and references to tie/or TEL shall be construed accordingly.

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3. Purpose

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3.1 The Edinburgh Gateway Tram Works Grant shall be used only for the purpose of meeting ~~part of all~~ the Eligible Capital Costs of the Project incurred until the Final Grant Availability Date and for no other purpose whatsoever, but this provision shall not prevent the Council from making application for Instalments after the Final Grant Availability Date.

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3.2 ~~The Project means the construction, operation and maintenance of a new tram stop (which includes, but is not limited to, new tram stop, tram trackworks and new retaining walls) on Phase 1a of the Edinburgh Tram Network which is currently under construction.~~

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3.2.1 ~~Phase 1a of the Edinburgh Tram Network means the construction of a tramway system complying with all Applicable Law from Leith Waterfront (Newhaven) via Princes Street and Haymarket to Edinburgh Airport and is sometimes referred to as "Phase 1a".~~

3.3 ~~The Council shall carry out, or procure the carrying out of, the Project with all due diligence and will perform its obligations (and, or procure another does so on its behalf, under the Edinburgh Gateway Trams Contracts as they fall due for performance and will not exercise any rights to terminate any of the same without first giving the Scottish Ministers 30 days notice save in the event of an emergency or where the Council properly and reasonably considers it is commercially important to take such action in which case no such notice shall be required.~~

3.4 The Council shall at all times during the carrying out of the Project and the subsequent operation of the Edinburgh Tram Network have due regard to the objectives of the Scottish Ministers as set out in the National Transport Strategy and the Government Economic Strategy.

3.5 The Edinburgh Gateway Tram Works Grant shall be used solely to meet all part of the Eligible Capital Costs in accordance with this Agreement and for no other purpose whatsoever.

3.6 For the avoidance of doubt it is specifically declared that the Edinburgh Gateway Tram Works Grant is a subsidy only and not a payment for services provided or to be provided to the Scottish Ministers.

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4. **Payment**

- 4.1 The Edinburgh Gateway Tram Works Grant shall be paid in Instalments and the first Instalment shall be paid following receipt of a fully substantiated and valid claim in accordance with Annex 2 and accompanied by the Reports completed to the satisfaction of the Scottish Ministers.
- 4.2 The Council shall provide the Reports and application for Instalments in accordance with Clause 4.3 and shall take part in the review meetings in accordance with Clause 16.2.
- 4.3 Reports and applications for Instalments shall be made in accordance with the programme of Period End Dates and Application Dates set out in Annex 3.
- 4.4 Within Five Business Days of the receipt of an application for an Instalment the Scottish Ministers shall advise the Council of the extent to which that application has been approved and at any time after receipt of the notification the Council may issue an invoice in respect of the approved amount. The Scottish Ministers will pay valid invoices within 28 days.
- 4.5 The Scottish Ministers will pay the Edinburgh Gateway Tram Works Grant and all Instalments to the Council's Bank Account at Royal Bank of Scotland, St Andrew Square, Edinburgh, Sorting Code: 83 06 08, Account No: 11342348.
- 4.6 No part of the Edinburgh Gateway Tram Works Grant shall be used to fund any activity carried out, or material published by the Council, which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 4.7 The Scottish Ministers may refuse to make any or all payments of Instalments if they are not satisfied that the Council will use the Edinburgh Gateway Tram Works Grant for the purpose specified in Clause 3. The Scottish Ministers may refuse to make payment if they are not satisfied that any previous Instalment paid to the Council has been used for the purpose determined in Clause 3.
- 4.8 The Scottish Ministers shall not be bound to pay to the Council
- (a) any sum by way of the Edinburgh Gateway Tram Works Grant which would cause the maximum stated in the Letter to be exceeded, ~~subject to Clauses 4.9 and 4.10 or, in respect of any of the Eligible Capital Costs, which would cause any of the Eligible Capital Costs Allocations to be exceeded.~~
 - (b) any sum by way of Edinburgh Gateway Tram Works Grant where, as at the due date for payment, an Event of Default ~~(or event which with the giving of notice, lapse of time or other condition may constitute an Event of Default)~~ has occurred, provided that said sum will become due and payable to the Council if the Event of Default is subsequently resolved to the Scottish Minister's reasonable satisfaction. The Scottish Ministers may at their discretion pay the Edinburgh Gateway Tram Works Grant or any part of an Instalment otherwise due to be paid or any part thereof notwithstanding, and without waiving, any such Event of Default or event.

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4.9 Without prejudice to Clause 4.10 below, the Council may obtain payment from the Scottish Ministers for Eligible Capital Costs which exceed the amounts specified in Paragraph 1 of the foregoing Letter to the Council ("Cost Overruns") if the prior written consent of the Scottish Ministers has been obtained before such Cost Overruns are incurred. Such prior written consent:

4.9.1 shall be granted subject to such conditions as the Scottish Ministers may see fit;

4.9.2 shall only be granted if in the sole opinion of the Scottish Ministers:

(a) the Cost Overruns are deemed necessary for the continuance of the Project; and

(b) the Council and/or tie have taken all reasonable action to minimise any potential Cost Overruns.

4.10 Without prejudice to Clause 4.9 above, the Scottish Ministers shall be obliged to pay the Council for all Eligible Capital Costs which exceed the amount specified in Paragraph 1 of the foregoing Letter to the Council where such Eligible Capital Costs are incurred as a consequence of Third Party Arrangements.

5. Not Used

6. Not Used

7. Not Used

8. Audit Certificate

8.1 The Council shall ensure that adequate internal expenditure controls are in place and that all resources are used economically, effectively and efficiently. The Council shall hold all funding related to the Project comprising the Edinburgh Gateway Tram Works Grant from the Scottish Ministers in a separate bank account for the Project and shall not make payments to tie Limited (tie) in advance of need. A copy of the relevant accounting record shall be provided to the Scottish Ministers with the Audit Certificate referred to in Clauses 8.2 and 8.3 below.

8.2 The Council shall supply and shall procure that tie shall supply to the Scottish Ministers such documents and information which they may reasonably require in connection with the Edinburgh Gateway Tram Works Grant and the Project.

8.3 The Council shall within three months following the end of each Financial Year in which Instalments have been paid and of receiving the final Instalment of the Edinburgh Gateway Tram Works Grant submit to the Scottish Ministers a statement of compliance with the terms and conditions of the ~~this~~ Grant Agreement using the form of words below.

The statement shall be signed by the Council's Director of Finance.

"STATEMENT OF COMPLIANCE

Edinburgh Gateway Project

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This is to confirm the Edinburgh Gateway Tram Works Grant claimed by The City of Edinburgh Council in relation to the above project during the Financial Year ended [31 March 20xx] was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant Agreement. This statement is supported by the records of The City of Edinburgh Council.

Signed:

Name in block capitals:

Director of Finance"

9. **Accounts and Records**

- 9.1 The Council shall keep and maintain for a period of 3 years after the Project is completed, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of the Edinburgh Gateway Tram Works Grant. The Council shall procure that **tie** shall keep and maintain for a period of 3 years after the Project is completed adequate and proper records and books of account recording all receipts and expenditure of monies relating to the Project.
- 9.2 The Council shall by 30 June next following the end of any Financial Year in which Edinburgh Gateway Tram Works Grant has been paid submit to the Scottish Ministers an audit certificate.
- 9.3 The audit certificates referred to in paragraphs 9.1 and 9.2 above shall be prepared by the Council's Head of Internal Audit, or by the Council's Director of Finance or by external auditors in a style approved by the Scottish Ministers. The audit certificate shall show Eligible Capital Costs and actual expenditure met from the Edinburgh Gateway Tram Works Grant. Irregularities within the audit certificate shall be treated as a breach of this Agreement and shall be consequently subject to the provisions of Clause 13 of this Schedule.
- 9.4 The Council shall throughout the period of the payment of Instalments and thereafter until 3 years after the final payment by the Scottish Ministers to the Council pursuant to this Agreement present to the Scottish Ministers not later than six months after the end of every accounting reference period a copy of the audited financial statements of **tie** and the audited consolidated financial statements of any group of companies of which **tie** forms part for that accounting reference period.

10. **Inspection of Accounts and Records**

- 10.1 If the Scottish Ministers consider it necessary to gain access to and inspect the Council's accounts and records to verify the proper use of the Edinburgh Gateway Tram Works Grant in accordance with Clause 3, the Council shall on 53 Business Days notice issued by the Scottish Ministers, make all accounts and records available to the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representative and such other persons as the Scottish Ministers may reasonably specify from time to time. The Council shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require. Should the Scottish Ministers exercise this right of inspection, the Scottish Ministers shall subject to Clause 12 keep the contents of the accounts and records confidential. However the duty of confidentiality shall not

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prejudice the Scottish Ministers from using the information in the management of the Edinburgh Gateway Tram Works Grant nor from any action the Scottish Ministers wishes to take in accordance with Clause 13.

- 10.2 If the Scottish Ministers considers it necessary to gain access to and inspect the accounts and records held by **tie** to verify the proper use of the Edinburgh Gateway Tram Works Grant in accordance with Clause 3, the Council shall procure that on 53 Business Days notice issued by the Scottish Ministers, **tie** makes all accounts and records available to the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time. The Council shall procure that **tie** shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require. Should the Scottish Ministers exercise this right of inspection, the Scottish Ministers shall subject to Clause 12 keep the contents of the accounts and records confidential. However the duty of confidentiality shall not prejudice the Scottish Ministers from using the information in the management of the Edinburgh Gateway Tram Works Grant nor from any action the Scottish Ministers wishes to take in accordance with Clause 13.

11. **Compliance with Law**

- 11.1 The Council shall and shall procure **tie** shall comply with all Applicable Law including without limitation the Data Protection Act 1998 and will not and shall procure that **tie** will not commit any act of discrimination rendered unlawful by the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 (as such legislation may be amended or re-enacted from time to time) or any other legislation relating to discrimination on any ground whatsoever.

12. **Publicity and Confidentiality**

- 12.1 The Council shall and shall procure that **tie** and ~~TEL~~Transport-Edinburgh Limited (~~TEL~~) shall acknowledge in all publicity material (including any websites) relating to the Project the contribution of the Scottish Ministers to the Eligible Capital Costs. The form of such acknowledgement shall be agreed between the Council and the Scottish Ministers prior to its first publication. For the avoidance of doubt **publicity material** does not include routine announcements of an operational nature, emergency announcements or statements or publicity material of an essentially ephemeral nature.
- 12.2 The Council shall and shall procure that **tie** and TEL shall give the Scottish Ministers early warning (meaning not less than 5 Business Days notice) of all major announcements regarding the Project and at least 48 hours notice of minor announcements. Notwithstanding Clause 15, notice of announcements pursuant to Clause 12.1 and this Clause 12.2 may be given by email. This requirement does not apply to routine announcements of an operational nature or emergency announcement or statements.
- 12.3 The Council shall not, and shall ensure and procure that **tie** and TEL and its and their respective agents, employees, representatives and sub-contractors do not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the Scottish Ministers.

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- 12.4 The Scottish Ministers may publish or disclose this Agreement or any part of it, any information concerning this Agreement or matters arising out of or in connection with it, the performance of the Council under this Agreement and any other information as it may deem appropriate from time to time. The Scottish Ministers shall use reasonable endeavours to notify the Council prior to publishing or disclosing any such information directly relating to the Council, and shall take into account any representations which the Council may make in connection therewith.
- 12.5 The Council shall and shall procure that **tie** and TEL shall do all things necessary to facilitate the Scottish Ministers' compliance with the Scottish Government's Publication Scheme (as required by section 23 of the Freedom of Information (Scotland) Act 2002) in force from time to time.
- 12.6 The Council shall and shall procure that **tie** and TEL shall and shall procure that **tie** and TEL shall use reasonable endeavours to procure that sub-contractors shall treat as confidential and shall not disclose to any third party except with the prior consent of the Scottish Ministers (which may be granted subject to such conditions as the Scottish Ministers may see fit) any information obtained by it from the Scottish Ministers under or in connection with ~~this~~the Agreement.
- 12.7 Notwithstanding any of the foregoing provisions of this Clause 12, or any other provision of this Agreement, either Party may disclose any information:
- 12.7.1 for judicial purposes;
 - 12.7.2 which is or becomes public knowledge (other than by breach of this Clause 12)
 - 12.7.3 which is in possession of the Party disclosing it without restriction as to its disclosure before receiving it from the disclosing Party; or
 - 12.7.4 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 12.7.5 as is required by law, including without limitation the Freedom of Information (Scotland) Act 2002,
 - 12.7.6 as the Council should properly inform Council Members or otherwise pursuant to its Standing Orders

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13. **Default, Cure and Remedies**

13.1 Default

The occurrence of any of the following circumstances or events shall constitute an Event of Default:

- (a) the Council knowingly and deliberately giving any fraudulent written information to the Scottish Ministers which read as a whole is incorrect or misleading, in substance or the manner of presentation, in a material respect whether such information is provided prior to or after the payment of any Edinburgh Gateway Tram Works Grant is made;

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- (b) the Council ceasing or threatening to cease to deliver the Project or any material part thereof unless previously agreed with the Scottish Ministers;
- (c) the Council committing a material breach of any provision of this Agreement which if capable of remedy has not been remedied within 7 days (or such longer period as is reasonable given the nature of such breach) of the Scottish Ministers giving the Council written notice of the alleged existence of such breach and the Scottish Ministers' intention to treat such breach as an Event of Default if not remedied within the period of time specified in such notice, and such period of time passes without such breach having been remedied;
- (d) any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable the Council to comply with any of its obligations hereunder which are material (as determined by the Scottish Ministers) acting reasonably being modified, revoked or withheld or ceasing to remain in full force and effect and not being reinstated in full force and effect or replaced by an equivalent (other than where such reinstatement or replacement requires to be sought by a party other than the Council not being a subsidiary Company of the Council), unless lack of the same does not affect the delivery of the Project or any of them and/or said reinstatement or replacement is achieved within 7 Business Days (or such longer period as is reasonable given the nature of such breach) of the Scottish Ministers giving the Council written notice of the alleged existence of such breach and the Scottish Ministers' intention to treat such breach as an Event of Default if not remedied within the period of time specified in such notice, and such period of time passes without such breach having been remedied;
- (e) if, the Scottish Ministers having issued a Cure Notice pursuant to Clause 13.3.1, the terms of the Cure Plan have not been agreed within the period stated in the Cure Notice or if the actions specified in a Cure Plan approved by the Scottish Ministers to be taken by the Council shall not have been taken and the matters referred to in the Cure Plan have not otherwise been resolved to the reasonable satisfaction of the Scottish Ministers within the period specified in the Cure Plan;
- (f) if, the Council shall fail to spend the Edinburgh Gateway Tram Works Grant for the purposes specified in Clause 3.

.....
Notwithstanding the above, in the event that a delay to the Project or any part thereof occurs as a result of the act or omission of a party other than the Council, tie or TEL, then an Event of Default shall be deemed to not have arisen if it could reasonably be considered that the Council, tie or TEL have taken all action reasonably necessary to minimise the impact of such act or omission once brought to its attention.

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13.2 Cure

13.2.1 The Scottish Ministers may at any time issue a Cure Notice in accordance with Clause 13.3.1 if:

- (a) the Council shall fail to supply the Reports and comply with the Application procedures specified in Annex 1;
- (b) the Council shall fail to comply with any of its material obligations under this Agreement;

~~(c) the occurrence of any event which allows or which with the lapse of time would allow any party to a Edinburgh Gateway Trams Contract to terminate the relevant contract before its natural expiry date or to exercise any other remedy thereunder; and/or~~

(d)(c) there shall occur an Event of Default or any event or series of events which the Scottish Ministers (acting reasonably) consider could cause an Event of Default to occur if not resolved or otherwise dealt with.

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13.3 Cure Notice and Cure Plan

13.3.1 In this Agreement a **Cure Notice** means a notice by the Scottish Ministers to the Council requiring the Council, in consultation with the Scottish Ministers to submit and agree within 10 Business Days (or such longer period, to be specified in the Cure Notice, as is reasonable the Scottish Ministers may ~~require~~ having regard to the matters referred to in the Cure Notice) a programme of action which will, if performed, cure or remedy or otherwise resolve (to the extent reasonably practicable in the context of the Project as a whole) the matters referred to in the Cure Notice to the satisfaction of the Scottish Ministers within such period acceptable to the Scottish Ministers as is reasonable in the circumstances.

13.3.2 In this Agreement a **Cure Plan** means the programme of action referred to in Clause 13.3.1.

13.3.3

(a) When the Cure Plan (as presented or amended to meet the requirements of the Scottish Ministers) has been approved by the Scottish Ministers (which approval will only be withheld if the Cure Plan will not cure, remedy or otherwise resolve the matters referred to in the Cure Notice to the reasonable satisfaction of the Scottish Ministers) the Council will implement the Cure Plan according to its terms and all to the satisfaction of the Scottish Ministers (acting reasonably)

(b) If at any time the Scottish Ministers (acting reasonably) are not satisfied with the progress being achieved by the Council in relation to the Cure Plan or the Council fails to implement the Cure Plan in accordance with its terms, then the Scottish Ministers may by notice to the Council declare that the payment of the Edinburgh Gateway Tram Works Grant shall be suspended whereupon the liability of the Scottish Ministers in respect of the Edinburgh Gateway Tram Works Grant shall be suspended forthwith. The liability of the Scottish Ministers in respect of the Edinburgh Gateway Tram Works Grant, if

suspended, shall be reinstated upon the implementation of the Cure Plan to the satisfaction of the Scottish Ministers or otherwise as the Scottish Ministers may decide. During any period of suspension the Scottish Ministers may, at their sole discretion, make advances to the Council in respect of the Edinburgh Gateway Tram Works Grant without conferring any rights on the Council or waiving any right of the Scottish Ministers.

13.4 Remedies

If the Scottish Ministers become aware of the occurrence of an Event of Default the Scottish Ministers may at any time exercise either all or any of the following remedies:

13.4.1 by notice to the Council terminate this Agreement on such subsequent date as the Scottish Ministers in their sole discretion shall stipulate in the Notice, but only where the Scottish Ministers have first given the Council written notice of their intention to terminate this Agreement as a consequence of such Event of Default unless it is remedied within a reasonable period specified in such notice and after such period of time the said Event of Default has not been so remedied to the Scottish Ministers' reasonable satisfaction;

13.4.2 reassess, vary, make a deduction from or, withhold in future or require repayment of the Edinburgh Gateway Tram Works Grant or any part thereof, but only where the Scottish Ministers have first given the Council written notice of their intention to take such action as a consequence of such Event of Default unless it is remedied within a reasonable period specified in such notice and after such period of time the said Event of Default has not been so remedied to the Scottish Ministers' reasonable satisfaction;

13.4.3 issue a Cure Notice.

13.5 This Agreement may be terminated at any time by agreement between the Scottish Ministers and the Council.

13.6 In the event of a failure by the Scottish Ministers to implement any of their obligations under this Agreement the sole remedy of the Council shall be to rescind and to recover from the Scottish Ministers any financial losses suffered by the Council as a direct consequence of such failure.

13.7 Notwithstanding the provisions of this Clause 13, Clauses 1, 2, 8, 9, 10, 11, 12, 13, 18, 19, 20, 23 and 24 shall survive termination of this Agreement along with any other Clauses necessary to give effect to those provisions, subject to Clause 22.

13.8 If the Council has to repay any amount of the Edinburgh Gateway Tram Works Grant to the Scottish Ministers under this Clause, the Council shall pay to the Scottish Ministers the appropriate sum within 30 days of a written demand from the Scottish Ministers. If the Council fails to pay within the period of 30 days, the Scottish Ministers shall be entitled to interest at the Statutory Rate (as that expression is defined in the Late Payment of Commercial Debts (Interest) Act 1998) on the due amount from the date of the written demand until payment of the full amount.

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13.9 If the Scottish Ministers fail, omit or delay exercising any right or remedy under this Clause or any other provision of the Agreement, this shall not be construed as a waiver of the right or remedy.

14. **Assignment**

14.1 The Council shall not be entitled to assign, sub contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers, save that it shall be entitled to sub-contract all obligations in respect of the delivery of the Project to tie TEL or to any other wholly owned Council company or organisation established for that purpose.

15. **Notices**

15.1 Any document, notice, statement or other thing under the terms and conditions of this Schedule shall be in writing may be given or served personally, or sent by first class recorded delivery post at or to:

- (a) if it is for the Scottish Ministers, either to, the Director Rail with a copy to Bill Reeve, both at Transport Scotland, Buchanan House, 58a Port Dundas Road, Glasgow, G4 0HF or to another addressee and/or address as notified to the Council; and
- (b) if it is for the Council, at or to the address specified in the award letter or at or to another addressee and/or address as notified by the Council to the Scottish Ministers.

15.2 Any document, notice, statement or other thing given or served by post in accordance with the foregoing paragraph shall be deemed to have been duly given or served on the second Business Day after the letter was posted. To prove that, it shall be necessary only to show that the letter was properly addressed and posted.

16. **Project Management and Controls**

16.1 The Council shall comply with Transport Scotland's project monitoring and control procedures from time to time applicable including but not limited to the project reporting and review specified in Annex 2 where the same are notified to the Council. The Council shall ensure that it and ~~tie~~ take all reasonable steps to provide information comprehensively and timeously when requested by the Scottish Ministers.

16.2 Meetings

16.2.1 The Council and Transport Scotland shall meet within five Business Days of the delivery of each of the Reports, or at such other time as may be agreed (the **Regular Meeting**), for the purposes of reviewing each Report and determining any actions required.

16.2.2 The Council and Transport Scotland shall be represented at the Regular Meeting by their representative Project Managers who may be accompanied by other members of their respective delivery teams.

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16.2.3 In the event that the Project Managers are unable to agree any matter discussed or to agree that any matter requires to be discussed then such matter shall be referred to the Senior Management Meeting.

16.2.4 The Senior Management Meeting shall be held every quarter on dates to be determined by the Scottish Ministers and the Council and Transport Scotland shall be represented at Senior Management Meetings, in the case of the Council, by the Director of City Development and, in the case of Transport Scotland, by the Director of Rail Delivery each of whom may be accompanied by other members of their respective delivery teams.

16.2.5 If a matter is referred to the Senior Management Meeting, each of the Council and Transport Scotland shall submit not less than five Business Days before the relevant Senior Management Meeting a paper stating the nature of the issue and provide copies of or reference to all relevant correspondence or documents.

16.2.6 If the Senior Management Meeting does not resolve any matter referred to it either party may initiate the process described in [Clause 24.25.]

16.3 The requirements of this Clause 16 shall be dealt with separately from and in addition to any reports, meetings and/or processes required under Clause 16 of the Trams Grant Agreement and/or Clause 16 of the Gogar Development Grant Agreement.

17. **Project Monitoring**

17.1 The Council shall, no later than 3 years after the completion of the Project, submit a report to the Scottish Ministers summarising the outcomes and performance of the Project. Such a report shall include such statistical and other information relating to the impact of the Project as shall be required by the Scottish Ministers.

18. **Assets and Equipment**

18.1 The Council shall keep and shall procure that **tie** and TEL shall keep all Funded Assets free from all liens, claims, taxes, assessments and encumbrances of any kind and nature at all times and shall not grant any fixed or floating charge or other security over such assets; this provision shall not prevent the Council leasing heritable property for the purpose of the Project on terms customary in Scotland or granting rights over or in connection with such assets to adjoining or neighbouring owners/occupiers or other interested parties.

18.2 The Council shall maintain ~~or~~ shall procure that **tie** and or TEL shall maintain register or registers of Funded Assets and the Scottish Ministers shall be entitled to inspect, and take copies of such registers of Funded Assets at any time.

18.3 The Council shall not and shall procure that **tie** and/or TEL, without the prior written approval of the Scottish Ministers, during the lifetime of the Funded Assets sell or otherwise dispose of any item or any series of connected or related items of Funded Assets costing, or costing in aggregate in the case of a connected series, in excess of £1,000,000 unless such items are replaced with items having similar value and utility. During that period the Scottish Ministers shall be entitled to 100% of the proceeds of sale of Funded Assets (or a equitable share thereof in respect of an asset only partly funded by the Edinburgh Gateway Tram Work Grant).

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19. **Intellectual Property**

19.1 The Council warrants and undertakes to the Scottish Ministers that all Intellectual Property Rights required to deliver the Project are the property of the Council, tie or TEL or have been validly licensed or otherwise made available to the Council on terms such that the Council has all necessary rights to employ the same for the purposes of the Project and that the Council is entitled to or will at the relevant time be entitled to confer on the Scottish Ministers or as the Scottish Ministers direct such rights in respect of the Intellectual Property Rights as the Scottish Ministers may require for any purpose contemplated in or connected with this Agreement without incurring any obligation to make payments or other liabilities to any third party.

19.2 The Council hereby indemnifies and agrees to indemnify the Scottish Ministers against all economic loss directly suffered by the Scottish Ministers as a consequence of all actions, proceedings, claims and demands successfully made against the Scottish Ministers by reason of any infringement of any Intellectual Property Right referred to in Clause 19.1 alleged by any third party, such to the extent the Scottish Ministers (or those for whom they are legally responsible) are responsible for the same.

20. **Corrupt Gifts and Payments of Commission**

20.1 The Council shall not offer or give or agree to give any person any gift or consideration of any kind as an inducement or reward in relation to the Edinburgh Gateway Tram Works Grant. The Council shall ensure that its employees and those of **tie** shall not breach the terms of the Prevention of Corruption Acts, 1889 to 1916 or the Bribery Act 2010 (once in force) in relation to the Edinburgh Gateway Tram Works Grant or any other grant.

21. **Public Sector Contribution**

21.1 If the Council shall receive any further contribution in connection with the Project (excluding other funding from the Scottish Ministers) either in cash or in kind from or on behalf of any public sector body (including any government body, institution or fund of the European Union, local authority, statutory undertaking or other body wholly or substantially funded by public money) the Scottish Ministers shall be entitled to reduce the Edinburgh Gateway Tram Works Grant by the amount of such contribution (**Public Sector Contribution**) provided that the Scottish Ministers shall make no reduction nor take any action under Clause 21.3 if such Public Sector Contribution has been previously approved by the Scottish Ministers following a notification by the Council to the Scottish Ministers referring to this Clause 21 and providing reasonable details of the Public Sector Contribution to be received by the Council.

21.2 The Council shall notify the Scottish Ministers immediately if:

- (i) the Council shall make an application for any Public Sector Contribution in connection with the Project; or
- (ii) the Council receives notification that it will receive, or will receive an offer of, any Public Sector Contribution in connection with the Project; or

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(iii) the Council shall receive any Public Sector Contribution in connection with the Project.

21.3 The Scottish Ministers may reclaim the Edinburgh Gateway Tram Works Grant, reduce the Edinburgh Gateway Tram Works Grant or withhold payment to the extent the same equals the amount take account of any Public Sector Contribution received by the Council. Any amount reclaimed as aforesaid shall be paid within twenty one days of demand by the Scottish Ministers to the Council and if not so paid may be deducted by the Scottish Ministers from any subsequent Instalment.

22. Continuation of Conditions

22.1 Except for the conditions in Clauses 18 and 19 these Conditions shall continue to apply for a period of 5 years after the end of the Financial Year in which the final instalment of the Edinburgh Gateway Tram Works Grant was paid.

22.2 The conditions in Clauses 18 and 19 shall apply until 1 year after the end of the life of any Project asset in connection with which the Edinburgh Gateway Tram Works Grant is paid.

23. Jus Quaesitum Tertio

23.1 It is expressly declared that no rights shall be conferred under or arising out of this Agreement nor shall this Agreement be capable of conferring, nor operating to confer, any rights upon any person other than the Scottish Ministers and the Council (and their permitted successors and assignees).

24. Jurisdiction and Disputes Resolution

24.1 The agreement shall be interpreted in accordance with the law of Scotland and the Council submits to the non-exclusive jurisdiction of the Scottish courts.

24.2 Neither Party may commence any proceedings arising from or in connection with this Agreement until the Resolution Period (as hereinafter defined) has elapsed.

24.3 The Resolution Period shall commence on the Business Day upon which a Party shall receive from the other a notice setting out the subject matter of the dispute accompanied by copies of or reference to all relevant correspondence and documents (including expert's reports) and shall terminate on the fifteenth Business Day after such receipt.

24.4 During the Resolution Period the Parties shall meet at a Senior Management level to attempt to investigate and discuss the dispute and the position of both parties on the matters in dispute with a view to finding common ground and resolving the dispute.

24.5 Where a dispute relates to the amount of any payment the Party disputing the payment shall pay an undisputed amount when due.

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Annex 1

Eligible Capital Costs

Eligible Capital Costs means all costs incurred by the Council in connection with the Project so far as consisting of the items listed in Column 1 of the table below.

The costs associated with such items comprising the Eligible Capital Costs shall, in respect of the relevant item, total an amount no greater than the amounts listed in Column 2 below (the **Eligible Capital Costs Allocation**):

Eligible Capital Costs²	Eligible Capital Costs Allocation
(a) Earthworks & Retaining Walls	£[•]
(b) Trackbed, Ducts & Drainage	£[•]
(c) Trackwork & Turnout	£[•]
(d) Tramstop incl. Enclosure	£[•]
(e) Existing service works	£[•]
(f) Power & OLE	£[•]
(g) Signalling, Communications & Controls	£[•]
(h) Ancillary works incl. Depot Gate, Boundary Fence, Emergency Egress Route, etc.	£[•]
(i) Preliminaries, Overhead, etc.	£[•]
(j) Risk	£[•]

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[To be discussed, should be no Eligible Capital Costs Allocation, should be a general list of permitted costs, including legal costs and outlays, costs payable to Network Rail/third parties, crichel down costs, costs of monitoring of works by CEC, etc]

² Definition of Eligible Capital Costs subject to further development; limbs (a) to (j) have been completed at present to give an indication of how the works (and the grant allocated to them) are to be divided.

Annex 2

This Annex 2 contains the project monitoring and control procedures of Transport Scotland as at the date of the Letter; these procedures may be varied from time to time as contemplated to in Clause 16.1.

Contents

[Part 1: Proforma Application – proforma to be provided by Transport Scotland

Part 2: Reporting Instructions – to be provided by Transport Scotland

Part 3: Project Financial Summaries - proforma to be provided by Transport Scotland

Project Financial Summary 1 (PFS1)

Project Financial Summary 2 (PFS2)

Project Financial Summary 3 (PFS3)

Part 4: 4 Week Period Reporting Pack - proforma to be provided by Transport Scotland]

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Annex 3

[Programme of Period End Dates and Application Dates to be inserted.]

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