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Your reference

Our reference

AF/LED/310299/1/
677797.1

23 June 2005

Dear Alex

THE CITY OF EDINBURGH COUNCIL - DUTY OF CARE

Following your call on Tuesday morning and our exchange of e-mails, I have discussed the issue with Mark Swindell, my Group Head, our UK Risk Management Director and Bruce Westbrook, Joint Managing Partner in Scotland.

Please find attached a draft letter which we are ready to provide to tie. An explanation in brief:-

- Para 1 We are happy to extend to CEC the same duty of care we owe to tie. Since we have contracted on the basis of tie Limited as client and the party who instructs us, we believe it would not be reasonable to place us in a position where we have to make assumptions about CEC's interests or instructions.
- Para 2 We need to continue to advise tie (as a sole source of instructions), whose interests (and therefore the fiduciary duty of its Board) may not fully coincide with CEC's objectives and interests; this is a judgement only tie can make.
- Para 3 Absent a separate appointment providing for direct engagement with CEC, the additional duty of care should not give rise to the possibility that CEC applies a different interpretation of the duty of care we owe or seeks different recourse or remedy for any breach by us.
- Para 4/5 Our contract with tie is assignable. However, we consider it is reasonable for any transfer by CEC of the new duty of care owed to CEC to be subject to our consent. In owing the new duty of care we wish to be sure we can rely upon tie's other consultants' work.

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A list of members is open for inspection at its registered office and principal place of business, Rutland Square, Edinburgh, EH1 2AA and at the address at the top of this letter. Partner denotes member of a limited liability partnership.

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Alex Macaulay
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I hope this provides an acceptable solution satisfying **tie's** obligation to CEC and I look forward to hearing from you.

Yours sincerely

ANDREW FITCHIE
Partner
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