

**DLA PIPER SCOTLAND LLP**

**STRATEGY PAPER**

**for**

**tie LIMITED**

relating to

the provision of System Design Services  
in connection with the Edinburgh Tram Network

24 October 2007

**1. INTRODUCTION**

- 1.1 **tie** Limited (hereinafter referred to as "**tie**") on 24 October 2007 requested DLA Piper Scotland LLP (hereinafter referred to as "**DLA**") to provide a strategy paper in connection the provision of legal advice relative to an agreement (hereinafter referred to as the "**Agreement**") between **tie** and Parsons Brinckerhoff Limited (hereinafter referred to as the "**SDS Provider**") for the provision of certain services by the SDS Provider in respect of the Edinburgh Tram Network.
- 1.2 **tie** has identified a number of potential failures by the SDS Provider and seek legal advice as to the potential grounds for recovery under the Agreement in respect of losses suffered or to be suffered by **tie** as a consequence of those potential failures.

**2. OVERVIEW OF OVERALL STRATEGY**

The overall strategy will be developed between DLA and **tie** as further investigation is conducted. At this time, DLA are of the opinion that the overall strategy comprises:

- 2.1 Identification, legal and factual review of three/four discrete issues which **tie** consider the actions of the SDS Provider to be a breach of the Agreement by the SDS Provider; and
- 2.2 Identification, legal and factual review of certain claims notified by Alfred McAlpine Infrastructure Services Limited (hereinafter referred to as "**AMIS**") under and in terms of the contract between **tie** and AMIS for the diversion of utilities as part of the Edinburgh Tram Network (hereinafter referred to as the "**MUFA Contract**") which **tie** consider can be attributed to the default of the SDS Provider under the Agreement and for which **tie** seek recovery under the Agreement.

**3. SUMMARY OF ACTIONS RELATIVE TO THE AGREEMENT**

The actions to be carried out will be developed between DLA and **tie** as further investigation is carried out. At this time, DLA are of the opinion that the strategy relative to the Agreement gives rise to the following actions:

Activity Reference	Activity	Reason for Activity	Anticipated DLA Resource (no. of solicitors)	Timescales/ Review Periods (to be agreed)	<b>tie</b> Comment
3.1	<u>tie to provide DLA with the outstanding information noted in paragraphs 3.4.1 to 3.4.8 of the Advice Note prepared by DLA dated 12 October 2007</u>	To allow DLA to fully consider the terms of the Agreement	N/A		Agreed
3.2	<u>tie to arrange meeting to explain to DLA programme methodology under the Agreement (attendees to include Thomas Hickman)</u>	To allow DLA to fully consider the terms of the Agreement	3		Agreed
3.3	<u>tie to provide to DLA electronic access to archived correspondence issued and</u>	To facilitate access by DLA to factual information	N/A		Agreed

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	received in connection with the Agreement				
3.4	<u>tie</u> to provide to DLA a summary of its opinion as to why <u>tie</u> considers the actions of the SDS Provider in regard to three discrete issues (dilapidation surveys, sewer surveys and trial holes) constitute failures by the SDS Provider under the Agreement	To focus resources on relevant issues	N/A		Agreed
3.5	<u>tie</u> to provide to DLA copies of all relevant correspondence issued and/or received by <u>tie</u> prior to 18 August 2007 (excluding electronic correspondence, such as e-mails) in regard to the three discrete issues (dilapidation surveys, sewer surveys and trial holes) which <u>tie</u> consider the actions of the SDS Provider constitute failures by the SDS Provider under the Agreement	To obtain and collate relevant factual information available	N/A		Agreed
3.6	<u>tie</u> to provide to DLA copies of all relevant correspondence issued and/or received by <u>tie</u> after 18 August 2007 (excluding electronic correspondence such as e-mails) in regard to the three discrete issues (dilapidation surveys, sewer surveys and trial holes) which <u>tie</u> consider the actions of the SDS Provider constitute failures by the SDS Provider under the Agreement	To obtain and collate relevant factual information available	N/A		Agreed
3.7	DLA to review the terms of the Agreement and advise <u>tie</u> of the obligations of the SDS Provider under the Agreement in regard to the three discrete issues (dilapidation surveys, sewer surveys and trial holes) which <u>tie</u> consider the actions of the SDS Provider constitute failures by the SDS Provider under the Agreement	To consider and advise on legal basis of claims	2		Action agreed. Please estimate fee
3.8	DLA to review correspondence issued and/or received by <u>tie</u>	To consider factual basis and surrounding circumstances of	3		Action

	(excluding electronic correspondence such as e-mails) in regard to the three discrete issues (dilapidation surveys, sewer surveys and trial holes) which <b>tie</b> consider the actions of the SDS Provider constitute failures by the SDS Provider under the Agreement	claims			<u>agreed.</u>  Please estimate fee
3.9	DLA to advise <b>tie</b> as to the factual grounds (if any) made out in correspondence issued and/or received by <b>tie</b> (excluding electronic correspondence such as e-mails) in regard to the three discrete issues (dilapidation surveys, sewer surveys and trial holes) which <b>tie</b> consider the actions of the SDS Provider constitute failures by the SDS Provider under the Agreement	To advise on grounds of claims	2		<u>Action agreed.</u>  Please estimate fee
3.10	DLA Engineering and Construction Department to be kept advised of status of Settlement Agreement by DLA Finance and Projects Department	Awareness of the Settlement Agreement	1		<u>Internal DLA action</u>
3.11	DLA to review the records kept by <b>tie</b> after August 2007 and advise <b>tie</b> on types and quality of records which should be maintained in regard to the Agreement	To confirm that processes are in place to manage the Agreement. Do you mean the SDS Agreement (main contract) or the Settlement Agreement?	3		<u>To be clarified</u>

#### 4. SUMMARY OF ACTIONS RELATIVE TO THE MUDFA CONTRACT

The actions to be carried out will be developed between DLA and **tie** as further investigation is carried out. At this time, DLA are of the opinion that the strategy relative to the MUDFA Contract gives rise to the following actions:

Activity Reference	Activity	Reason for Activity	Anticipated DLA Resource (no. of solicitors)	Timescales/ Review Periods (to be agreed)	<b>Tie</b> comments
4.1	<b>tie</b> to identify those heads of claim notified by AMIS which <b>tie</b> are of the opinion can be attributed to and arise as a result of a breach by the SDS Provider of the terms of the Agreement	To identify and focus resources on relevant issues			<u>Agreed</u>

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4.2	<u>tie</u> , in conjunction with <u>AMIS</u> , to collate and provide to <u>DLA</u> copies of all relevant correspondence issued and/or received by <u>tie</u> (excluding electronic correspondence, such as e-mails) in regard to those heads of claim notified by <u>AMIS</u> which <u>tie</u> are of the opinion can be attributed to and arise as a result of a breach by the SDS Provider of the terms of the Agreement	To utilise resources of <u>AMIS</u> to collate relevant information			<u>Agreed</u>
4.3	<u>tie</u> , in conjunction with <u>AMIS</u> , to collate and provide to <u>DLA</u> copies of all quantum information in regard to those heads of claim notified by <u>AMIS</u> which <u>tie</u> are of the opinion can be attributed to and arise as a result of a breach by the SDS Provider of the terms of the Agreement	To utilise resources of <u>AMIS</u> to collate relevant quantum data necessary to substantiate any claims			<u>Agreed</u>
4.4	<u>DLA</u> to review the terms of the Agreement and advise <u>tie</u> on the obligations of the SDS Provider under the Agreement in regard to those heads of claim notified by <u>AMIS</u> which <u>tie</u> are of the opinion can be attributed to and arise as a result of a breach by the SDS Provider of the terms of the Agreement	To consider legal basis of claims	2		<u>Action agreed.</u> <u>Please estimate fee</u>
4.5	<u>DLA</u> to review correspondence issued and/or received by <u>tie</u> (excluding electronic correspondence such as e-mails) in regard to the obligations of the SDS Provider under the Agreement in regard to those heads of claim notified by <u>AMIS</u> which <u>tie</u> are of the opinion can be attributed to and arise as a result of a breach by the SDS Provider of the terms of the Agreement	To consider factual basis and surrounding circumstances of claims	3		<u>Action agreed.</u> <u>Please estimate fee</u>
4.6	<u>DLA</u> to advise <u>tie</u> as to the factual grounds (if any) made out in correspondence	To advise on grounds of claims	2		<u>Action</u>

	issued and/or received by <b>tie</b> (excluding electronic correspondence such as e-mails) in regard to the obligations of the SDS Provider under the Agreement in regard to those heads of claim notified by AMIS which <b>tie</b> are of the opinion can be attributed to and arise as a result of a breach by the SDS Provider of the terms of the Agreement			<u>agreed.</u>  Please estimate fee
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**5. TIMESCALES/REVIEW PERIODS**

Timescales for each of the actions identified in this Strategy Paper will be agreed between **tie** and DLA.

**6. INSTRUCTIONS TO DLA**

DLA are of the opinion that items 3.6 to 3.11 and 4.4 to 4.6 (inclusive) should be instructed by **tie** at the earliest opportunity to allow proactive management of the claims process and early identification of potential issues. See comments above.

**7. FEE ESTIMATES**

DLA have provided a fee estimate to **tie** by way of e-mail dated Wednesday 17 October 2007 timed at 9:13. This fee estimate shall require to be reviewed as further investigation is carried out.

Please break down as identified above. It is agreed that regular review and updated instruction is required.

DLA

24/10/07