

## AGREEMENT

**BETWEEN tie** Limited, a company incorporated with registration number SC230949, and having its registered office at City Chambers, High Street, Edinburgh, Midlothian EH1 1YJ ("**tie**") and Parsons Brinckerhoff Limited, a company incorporated with registration number 2554514 and having its registered office at Amber Court, William Armstrong Drive, Newcastle Business Park, Newcastle Upon Tyne NE4 7YQ ("**PB**").

### WHEREAS

- A. On 19 September 2005, **tie** entered into an agreement ("the SDS Contract") with **PB** for the provision by **PB** of system design services ("the Services").
- B. **PB** has requested from **tie** payment of money for completion of certain works and services, as a result of alleged changes made by **tie** to the scope of the Services following the date of the SDS Contract, and as a result of alleged breaches of the SDS Contract by **tie**.
- C. The Parties have agreed to resolve these matters in accordance with and subject to the terms of this Agreement.

### ACCORDINGLY IT IS AGREED AS FOLLOWS:

1. Where the context allows, and unless states expressly to the contrary, capitalised terms used in this Agreement shall have the meaning that is given to them in the SDS Contract.
2. Reference to "including" shall mean "including without limitation to the generality of the foregoing", and "include" shall be interpreted accordingly.
3. In this Agreement, the following capitalised expressions shall have the following meanings:
  - 3.1 "**Assurance Certification**" means certification in manner described in the Design Verification Scheme (as defined in the Detailed Management Plan version V1.0 issued on 22 June 2007); provision of which by **PB** to **tie** must be accompanied by a fully completed certificate in the form set out at Appendix 3;
  - 3.2 "**Claims**" means the all of:
    - the changes alleged by **PB** to have been made by **tie** to the scope of the Services after the date of the SDS Contract, and breaches of the SDS Contract alleged by **PB** to have been committed by **tie**, which in each case are more particularly

detailed in the document "SDS Contract Claim for Additional Costs" dated 31 May 2007, and SDS letter dated 28 June 2007 "Claim for Additional Costs and Supervision Services - Period 09 April to 22 June 2007", and which are appended to this Agreement at Appendix 1; and

- the specific changes to the scope of the Services, alleged by PB to have been made by **tie** after the date of the SDS Contract, arising from, related to or connected with the matters detailed in Appendix 2 to this Agreement.

- 3.3 **"Date of Novation"** means the date on which the parties to the contract, which novates the SDS Contract to Infraco, enter into it;
- 3.4 **"Depot"** means the depot at Gogar comprising maintenance facilities, stabling facilities, sidings, operations, cleaning, the control centre, storage facilities and accommodation for operational and maintenance staff;
- 3.5 **"Design Assurance Package"** means a Detailed Design Package fully complete in accordance with the terms of the SDS Contract and in respect of which PB have provided Assurance Certification to **tie**;
- 3.6 **"Detailed Design"** means a detailed design delivered in accordance with the SDS Contract, as described in the SDS Contract, which is complete save for final coordination with other design disciplines, and obtaining Prior Approval from CEC;
- 3.7 **"Detailed Design Package"** means a group of Detailed Designs submitted by PB to **tie** in a single package;
- 3.8 **"MUDFA Contract"** means the contract between **tie** and Alfred McAlpine Infrastructure Services Limited for the diversion of utilities as part of the Edinburgh tram project;
- 3.9 **"Notification of Completion"** means the certificate which must be issued to **tie** by PB in respect of a Detailed Design, and in respect of which there has been consultation with CEC, which has been informally approved by the CEC and which has been completed save for: final coordination with completed designs for relevant related Detailed Design Packages; and obtaining Prior Approvals;
- 3.10 **"Phase 1a"** means Edinburgh Airport to Newhaven (inclusive), together with the Depot;

- 3.11 **"Prior Approval"** means formal written approval of designs by CEC's planning department;
- 3.12 **"Programme"** means the draft Version 18 SDS Programme; and
- 3.13 **"Utilities Detailed Design"** means utilities designs completed in all respects, including input from statutory utilities, and fully and finally checked and coordinated by PB prior to issue to the contractor under the MUDFA Contract.
4. Any and all rights of PB against **tie** under or in connection with the Claims (including any claim or action for breach of the SDS Contract, delict (including negligence) or a claim or action based on any other legal theory), and which are constituted by or arise from any facts or circumstances which occurred prior to 18 August 2007 whether or not known to **tie** at the date of this Agreement are irrevocably waived by PB. The rights of PB against **tie** referred to in this clause 4 include any and all actual or purported rights of PB against **tie**, including rights to additional payment, extension of time, or any right to require performance by **tie**, which would otherwise have accrued to PB as a result of the Claims.
5. **tie** will pay to PB:
- 5.1 £500,000 (five hundred thousand pounds), as part of but in addition to the amount payable to PB by **tie**, under the SDS Contract, in January 2008;
- 5.2 £500,000 (five hundred thousand pounds) following delivery by PB to **tie** of the last completed Utilities Detailed Design issued for construction for Phase 1a, to support the MUDFA Contract, except that where such Utilities Detailed Designs are not issued for construction by 12 January 2008 as a result of unreasonable acts or omissions of any Statutory Utility Company, then **tie** will pay the proportion of the £500,000 pro-rata to the number of the completed Utilities Detailed Designs up to that date as a proportion of the total, with the balance to be paid following completion of the last Utilities Detailed Design;
- 5.3 at the Date of Novation, the proportion of £500,000 (five hundred thousand pounds) pro-rata to the number of Detailed Design Packages in respect of Phase 1a, which have been delivered by PB to **tie** with all appropriate Notification of Completion;
- 5.4 £500,000 (five hundred thousand pounds), less the amount paid under clause 5.3, following delivery by PB to **tie** of the last completed Detailed Design Package in respect of Phase 1a, issued by PB to **tie** with all appropriate Notifications of

Completion in respect of all Detailed Designs comprising such Detailed Design Package;

- 5.5 at the Date of Novation, the proportion of £1,000,000 (one million pounds) pro-rata to the number of Design Assurance Packages delivered by PB to **tie**, in respect of Phase 1a, completed up to that date as a proportion of the total; and
- 5.6 £1,000,000 (one million pounds), less the amount paid under clause 5.5, following delivery by PB to **tie** of the last completed Design Assurance Package in respect of Phase 1a.

All amounts due under this Agreement are exclusive of VAT.

6. The payments set out at clause 6 shall be deemed to be "milestone payments", as referred to in clause 11.1.1 of the SDS Contract. Accordingly:
- 6.1 the provisions of clauses 11 and 12 of the SDS Contract shall apply, mutatis mutandis, to any payments to be made under clauses 5.2 to 5.6 (inclusive). Without limitation to the generality of the foregoing:
- 6.1.1 **tie** will therefore have no obligation to pay any such sum to PB unless and until PB has made an appropriate claim for payment in the manner set out at clause 12 of the SDS Contract;
- 6.1.2 the timescales set out at clause 12 of the SDS Contract in relation to the provision of invoices by PB, and for payment by **tie** of such invoices, shall apply to the payment of such sums; and
- 6.1.3 the provisions relating to the payment of interest on late payments shall apply to any late payment of such sums.
- 6.2 the provisions of clause 13 of the SDS Contract shall apply to payments due under clause 5, and therefore amounts due to **tie** from PB arising under or in connection with the SDS Contract may be set off by **tie** against any such payments provided that the provisions of clause 13 of the SDS Contract (mutatis mutandis) are satisfied in relation to the proposed set-off from these payments by **tie**.
7. The Parties acknowledge and agree that they are working to the remaining milestones set out in the Programme. PB acknowledges and agrees that, should one or more of these actions and

milestones not be carried out or met, the Edinburgh tram project may be jeopardised and/or become unaffordable for **tie**, with substantial adverse financial impact resulting to **tie**. This clause 7 is without prejudice to any rights or remedies of either Party in respect of any failure by a Party to carry out or meet one or more of these actions.

8. Nothing in this Agreement shall constitute or imply any acceptance of or agreement by **tie** with PB's interpretation of the contractual effect of any actual or alleged action or failure to act (in either case, under or in connection with the SDS Contract) by **tie** prior to the date of this Agreement or any other related matter previously discussed between the Parties.
9. In the event of any Dispute in relation to this Agreement, the Dispute Resolution Procedure shall apply.
10. This Agreement shall be governed by and construed in accordance with Scottish law and any dispute arising between the Parties shall be subject to the non-exclusive jurisdiction of the Scottish Courts.
11. Subject only to clause 12, each Party shall keep the terms of this Agreement, and the particulars of the disputes which gave rise to it, strictly confidential.
12. A Party may make any disclosures of the terms of this Agreement, and the particulars of the disputes which gave rise to it:
  - 12.1 to any professional advisers, auditors, bankers, financial advisers and financiers, on receipt of a written undertaking from that person to keep such information confidential;
  - 12.2 in order to comply with any law or requirement of any government agency (including any relevant Stock Exchange);
  - 12.3 in the case of **tie**, as a result of any request made of **tie** pursuant to the Freedom of Information (Scotland) Act 2002 or the Environmental Information Regulations (Scotland) 2004;
  - 12.3 in the case of PB, to any sub-contractor whose claims against PB form part of the Claims;
  - 12.4 to any employee or any employee of any related body corporate of a Party to whom it is necessary to disclose the relevant information, on receipt of a written undertaking from that person to keep the relevant information confidential; or
  - 12.5 to enforce this Agreement.

**IN WITNESS WHEREOF** these presents consisting of this and the preceding pages together with attached Appendix are executed as follows:

**EXECUTED** for and on behalf of **TIE LIMITED** on the 2008 by

Director/Authorised signatory

Full name

Witness

Address

**EXECUTED** for and on behalf of **PARSONS BRINCKERHOFF LIMITED** in

on the 2008 by

Director/Authorised signatory

Full Name

Witness

Address

**This is Appendix 1 referred to in the foregoing agreement between tie limited and Parsons  
Brinkerhoff Limited**

**APPENDIX 1**

*[ DN: Attach the SDS Contract Claim for Additional Costs prepared by PB, and PB's letter of 28  
June 2007]*

**This is Appendix 2 referred to in the foregoing agreement between tie limited and Parsons  
Brinkerhoff Limited**

**APPENDIX 2**

The matters referred to in the second limb of the definition of "Claims" are the Changes referred to in the following Table:

<b>No</b>	<b>Date</b>	<b>Title</b>	<b>Phase</b>	<b>Client Ref</b>
38	16/10/2006	Procurement Support / ITN Submittals	Detailed	
39	11/10/2006	Ocean Drive Bridges	Detailed	CRT039
42	13/10/2006	Constitution Street Stop New Edinburgh Ltd Proposed Development	Detailed	CRT042
44	17/10/2006	Levels	Detailed	CRT044
54	08/11/2006	Leith Sands Substation	Detailed	CRT054
59	14/11/2006	System and Comms Preliminary design plus	Detailed	CRT059
53	08/11/2006	Ocean Terminal Stop	Detailed	CRT053
71	24/11/2006	Accommodation Works at Murrayfield Section 1a - Ocean Terminal Southern	Detailed	CRT071
73	06/12/2006	Junction Redesign Additional Runtime Modelling (Sector 3 in and	Detailed	
82	23/11/2006	out)	Detailed	CRT082
99	23/01/2006	Flood Modelling at Gogarburn	Preliminary	CRT099
7	15/05/2006	New Bridge over Tramway at Depot	Detailed	CRS001
7	15/05/2006	New Bridge over Tramway at Depot	Preliminary	
8	15/05/2006	High Level Option at Baird Drive	Detailed	CRS002
8	15/05/2006	High Level Option at Baird Drive	Detailed	
37	13/10/2006	Haymarket Charette	Detailed	CRT037
40	16/10/2006	Ocean Drive Stop	Detailed	CRT040
55	08/11/2006	Newhaven Stop Layout	Detailed	CRT055
64	14/11/2006	Site Notification Letters	Detailed	CRT064
97	23/01/2007	GVD Notification Drawings	Detailed	CRT097

and

1. All deliverables necessary to incorporate all changes arising from value engineering, including raising the Depot level, rerouting utility diversions, rearrangement of Pway, rerouting of utilities, changes to the depot building and the like, replacement of the piled wall along the A8 with soil stabilisation into the designs for the Depot and adjacent elements of the Edinburgh Tram Network;
2. providing all technical support (on and off site) required to address any utilities design issues arising from the works under the MUDFA Contract and including resolution by PB of all



technical queries arising from use by the contractor under the MUDFA Contract of PB's design within the timescale necessary to avoid delays to the progress of the works under the MUDFA Contract and tram infrastructure installation works; and

3. all design works arising from the omission of structure S33 (Overbridge at Ingliston), including relocation of the Ingliston tramstop.

This is Appendix 2 referred to in the foregoing agreement between tie limited and Parsons  
Brinkerhoff Limited

APPENDIX 3

DESIGN ASSURANCE STATEMENT

**a) SUBMISSION DETAILS / TITLE:**

**Section / Sub-Section to which this Certificate Relates: (7)**

**Date of Issue: (8)**

**b) Summary of Section / Sub-Section Submission: (9)**

**c) Submission Specific Design Documents: (10)**

Have all Submission Specific Design Documents been reviewed, approved and under version control (in Hummingbird)?

Yes

No

**Comments**

**d) Submission Specific Drawings: (11)**

Have all Submission Specific Design Documents been reviewed, approved and under version control (in Hummingbird)?

Yes

No

**Comments**

**e) Applicable System-Wide Drawings and Documents: (12)**

Have all applicable System-Wide Drawings and Documents been reviewed, approved and under version control (in Hummingbird)?

Yes

No

Comments

**f) Principal Standards: (13)**

**Detail Applicable Standards;**

Have all referenced Principal Standards been adhered to, with any deviations approved and logged?

Yes

No

Comments

**g) Requirements Test Specification: Compliance of technical specification with Client needs/defined requirements (14)**

Compliance of technical specification with Client needs/defined requirements. Are the relevant Requirements Test Specification entries populated with the required compliance entries?

Yes

No

Comments

**h) Deviations and Non-Conformances including SDS requirements documentation: (15)**

**Detail relevant deviations' and non conformances**

Have all Deviations and Non-Conformances been approved and logged?

Yes

No

Comments

**i) Applicable IDC Forms: (16)**

Do all IDC Forms contain no issues and have been correctly signed off?

Yes

No

Comments

**j) Tram Design Manual and Design Briefs: (17)**

Have the Tram Design Manual and the Design Briefs been checked and issues addressed?

Yes

No

Comments

**k) Hazard Log: (18)**

**Detail Applicable References;**

Have all relevant entries in the Hazard Log been addressed and closed?

Yes

No

Comments

**l) Risk Register: (19)**

Have all relevant entries in the Risk Register been addressed and closed?

**Detail Applicable References;**

Yes

No

Comments

**m) Design Issues Tracker: (20)**

**Detail Applicable References;**

Have all relevant entries in the Design Issues Tracker been addressed and closed?

Yes

No

**Comments**

**n) DDA Tracker: (21)**

**Detail Applicable References;**

Have all relevant entries in the DDA Tracker been addressed and closed?

Yes

No

**Comments**

**o) Approvals and Consents: (22)**

**Detail Applicable References;**

Have all Approvals and Consents been granted for this submission?

Yes

No

**Comments**

Have all relevant entries in the Approvals and Consents Tracker been addressed and closed?

**Detail Applicable References;**

Yes

No

**Comments**

**p) Relevant Agreements and Undertakings: (23)**

**Detail Applicable References;**

Have all Agreements and Undertakings relevant to this submission been addressed and closed?

Yes

No

**Comments**

**q) CDM (24)**

“So Far as Reasonably Practicable(SFARP) has the design considered the avoidance of foreseeable risks to those involved in its construction, use, maintenance and decommissioning through the elimination/mitigation of hazards?

Yes

No

**Comments**

Have significant residual risks been recorded and provided in a clear manner with this design submission?

Yes

No

**Provide reference as to where information is contained (e.g. drawing no/ register reference)**

**Comments**

**r) Other Relevant Information: (25)**

**Signatures:**

<b>Section Design Manager</b>		<b>Date:</b>	
<b>Design Manager</b>		<b>Date:</b>	
<b>Project Director</b>		<b>Date:</b>	

## GUIDANCE NOTES

- (1) Detail the Section or Sub-Section that this Certificate of Compliance covers, the Certificate Number and the Date issued.
- (2) Detail the section of the Edinburgh Tram Network that this submission covers.
- (3) Describe the works, plant or equipment that this submission consists of, e.g. **Trackwork**, including switches, crossings, buffer stops, points control mechanisms and assemblies etc.
- (4) Verify that Sections c), d) and e) of the Design Verification Statement have been fully populated.
- (5) Verify that Section f) of the Design Verification Statement have been fully populated.
- (6) Verify that Section h) of the Design Verification Statement have been fully populated.
- (7) Detail the Section or Sub-Section that this DVS covers
- (8) Date Issued
- (9) Brief summary of the Section / Sub-Section, the design and features. For example, the Section / Sub-section characteristics, Tramstops, Substations, Structures, Landscaping, Environmental etc.
- (10) List the documents that are specific for this submission in this section.
- (11) List the drawings that are specific for this submission in this section.
- (12) List the applicable system-wide drawings and documents for this submission in this section.
- (13) List the applicable Principal Standards in this section (e.g. Engineering Standards) in this section
- (14) Check of the Requirements Test Specification (ULE90130-SW-SW-SPN-00048) to ensure that all relevant entries have been populated and supplied to the Systems Engineer responsible for controlling the Requirements Database.
- (15) Provide detail of any Deviations and Non-conformances from standards and/or specification, including SDS requirements documentation. in this section
- (16) List the applicable IDC Forms. Check that all IDC Forms have 'no-issues' versions and are correctly signed off.
- (17) Confirm that the design has addressed the relevant issues from the Tram Design Manual and Design Briefs.
- (18) Confirm that all relevant entries in the Hazard Log have been addressed and closed Reference shall be made to the relevant hazards in this section also identify hazards relating to the submission that are still open.
- (19) Confirm that all relevant entries in the Risk Register have been addressed and closed. Reference shall be made to the relevant risks in this section.
- (20) Confirm that all relevant entries in the Design Issues Tracker have been addressed and closed. Reference shall be made to the relevant issues in this section.
- (21) Confirm that all relevant entries in the DDA Tracker have been addressed and closed. Reference shall be made to the relevant issues in this section.



- (22) Confirm that all relevant entries in the Approvals and Consents Tracker have been addressed and closed. Reference shall be made to the relevant issues in this section.
- (23) List the relevant Agreements and Undertakings for this submission.  
Confirm that all Agreements and Undertakings relevant to this submission been addressed and closed. Reference shall be made to the relevant issues in this section.
- (24) Confirm that the designer has complied with his duties under the CDM regulations 2007. Ensure that residual risk information is provided with a source reference. If there are no residual risks please make the statement “No significant residual risk” in this section.
- (25) List any other relevant information for this submission.