

# **CONTRACT FOR SERVICES**

This Contract for Services is made on the 18<sup>th</sup> January 2010

## **BETWEEN**

- a) **tie limited**, whose Registered Office is situated at City Chambers, High Street, Edinburgh. EH1 1YJ. (Registered No. SC230949)  
(Known hereinafter as the Client),

## **And**

**Anthony Rush Limited** whose Registered Office is situated at 151 St Vincent Street, Glasgow G2 5NJ, (Registered No. 155040)  
(Known hereinafter as the Company).

## **RECITALS**

The Company is in business as a provider of **Commercial Advisory Services** (known hereinafter as the Services). It has relevant skills and abilities, and can undertake services as specified in Schedule A

The Client and the Company agree and intend that when the Company agrees to undertake services to the Client it will do so in accordance with the operative provisions of this Contract for Services.

The company shall undertake the provision of a delegate (know hereinafter as the Delegate) to perform the duties of the Contract for Services as stated in Schedule A. The Delegate is any individual deployed by the Company

## **OPERATIVE PROVISIONS**

### **THE CONTRACT WORKS**

1. This Contract for Services shall commence and terminate on the dates as stated in Schedule A (attached).
2. The Original Duration of this Contract for Services is as set out in Schedule A. A new Contract for Services may be negotiated by agreement in writing between the parties at any time.
3. Within seven (7) days of the signing of this Contract for Services, the Company will supply the Client with a copy of the relevant certificate of Incorporation, VAT registration and bank details.
4. The Company agrees to provide "the Services" to the Client for "the Contract Works". How the Company fulfils its contractual obligations is a matter for the Company save in compliance with Client company protocols, policies and procedures

5. The Company agrees to provide the Services in a professional manner with appropriate levels of skill, care and diligence at all times to the Client and it will owe a duty of care for services to the City of Edinburgh Council in the capacity of a specialist on a similar basis.
6. The Client shall not control, nor have any right of control as to how the Company performs the Contract Works, except under Clause 4. The Client recognises that the Company offers specialist services at a high level of expertise and as such cannot direct the Company on how to perform the Contract Works.
7. The Company undertakes that it will devote such time, attention, skill and ability, as required, to complete the Contract Works and provide progress reports which may be reasonably requested from time to time.
8. Nothing in this Contract shall constitute the Company or the delegate acting as an agent of the Client. Neither the Company nor the delegate shall have any right or power whatsoever to contract on behalf of the Client or to bind the Client in any way in relation to third parties unless specifically authorised to do so.
9. Nothing in this Contract shall constitute a partnership or joint venture between the Client and the Company or the Client and the delegate.
10. The Company will use its own initiative as to how the Contract Works are completed and will have flexibility with regard to the hours worked on location, but will, nonetheless, assist the Client by making all reasonable attempts to work within an overall agreed deadline and to the arrangements as agreed in Schedule A.
11. The Company will observe Health and Safety regulations and will comply with all reasonable operational requirements relating to working hours and security.
12. Start and finish times are at the discretion of the Company within an overall programme of Contract Works, which will be verbally agreed from time to time and to the arrangements as agreed in Schedule A.

## **SUBSTITUTION AND ASSOCIATED MATTERS**

13. The Company may, at its absolute discretion, offer to send a substitute or delegate to perform the Contract Works. This right to offer a substitute or delegate is unfettered and unlimited. However, the substitute or delegate offered must be of comparable experience and meet the approval of the Client.
14. Where the Company sends a substitute or delegate, the Client shall have no contractual, financial or legal relationship with the substitute or delegate. The Company is solely responsible for arranging payments to the substitute or delegate and the substitute or delegate is answerable only to the Company.

15. The Company may, at its absolute discretion, utilise directors, employees or self-employed persons in order to complete the Contract Works and in addition, may utilise the services of employees or self-employed persons in an administration capacity. Such persons will be answerable solely to the Company and the Client shall have no contractual, financial or legal relationship with the hired assistance. Payments to the above persons will be the sole responsibility of the Company.

#### **CONTRACT WORKS PRICE**

16. The Contract Price for the Contract Works will be as negotiated and agreed between the Client and the Company from time to time and this will be detailed in Schedule A.
17. The Client will pay the Company's Contract Price (plus VAT) in accordance with the rates set out in Schedule A solely against the presentation of an invoice.
18. The Client shall settle all invoices rendered by the Company relating to the provision of the Services within 30 days of receipt of the same by the Client.
19. The Client may require the Company to undertake the Contract Works at a different site or location from that agreed at the outset of this Contract for Services in Schedule A. The Company may at its own absolute discretion agree to undertake the Contract Works at a different site or location from that originally agreed but reserves the right to renegotiate the price for the contract works only if the change of location determines any additional cost or expense to The Company
20. The Client and the Company agree and intend that this is a Contract for Services essentially in respect of specialist services only.

## COMPANY OBLIGATIONS

21. The Company agrees:

- (a) To procure that its delegate is present during the Normal Working Hours;
- (b) To take all reasonable steps to safeguard its delegate and any other person affected by the delegate's actions during the services;
- (c) To procure that its delegate will comply with any rules or obligations in force at the premises where the Services are being performed during the services;
- (d) To provide the Client with any progress reports which may be reasonably requested from time to time;
- (e) To notify the Client if the Company becomes insolvent, dissolves or subject to a winding up petition;
- (f) To comply with all the requirements of the VAT legislation and the Companies Act 1985 (as amended).
- (g) To ensure that all statutory requirements regarding company reporting procedures are met and that the organisation is legally able to trade.
- (h) To ensure that any computer equipment and associated software which it provides to the delegate for the purposes of providing the Services contains anti-virus protection with the latest upgrade from time to time and will be year 2000 compliant.

## OBLIGATIONS OF THE CLIENT

22. The Client shall procure that:

- (a) The Client shall provide access to the premises and such of the Client's information, records and other materials as may be reasonably necessary for the delegate to perform the Services; and
- (b) The Client shall make available, free of charge, such working space and facilities at the premises as the delegate may reasonably require to perform the Services.
- (c) The Client shall include the delegate within the Client's Professional Indemnity Insurance with limit, extension, exclusions and conditions as considered appropriate by the Client.

## FINANCIAL RISK

23. The Company will negotiate the price for the Contract Works and, once agreed, is obliged to honour it.
24. Defective work by the Company, its directors, employees, consultants, substitutes or hired assistance will be corrected by the Company at its own cost or in its own time.
25. The Company warrants that it is qualified to perform the Services.
26. The Company, its directors, employees or consultants will not be entitled to receive holiday pay, Bank Holiday pay or special absence pay from the Client, in any circumstances.
27. The Company, its directors, employees or consultants will not be entitled to receive sick pay in any circumstances. The Company will bear the cost of any health insurance scheme, which it may arrange at its own discretion.
28. The Company shall be liable for any PAYE, Income Tax and National Insurance contributions and any other taxes and deductions payable in respect of its delegate for the services.
29. If for any reason the Client shall become liable to pay, or shall pay, any such taxes or other payments referred to in clause 26 above, the Client shall be entitled to deduct from any amounts payable to the Company all amounts so paid or required to be paid by it. To the extent that any amount of taxes paid or required to be paid shall exceed the amounts payable by the Client to the Company, the Company shall indemnify the Client on demand by the Client in respect of such liability and shall, upon demand, forthwith reimburse the Client such excess.
30. The Company will not be entitled to receive payment for cancelled Contract Works.
31. The Company is not entitled to partake in any grievance procedure and as an independent limited company is not entitled to any employment law rights.
32. The Company acknowledges the volatility of the Industry and accepts that there is the financial risk of bad debts when operating as an independent business on its own account.
33. The Client is not obliged to offer ongoing contracts or Contract Works to the Company nor is the Company obliged to accept such contracts or Contract Works if offered. The Company is not obliged to make its services available subject to period of contract agreed in Schedule A. Specifically both parties declare that they do not wish to create or imply any mutuality of obligations whatsoever, either during the course of this Contract for Services or during any period when Contract Works are not available.

34. The Client reserves the right to offset any losses sustained as a result of the Company's actions, breach or unsatisfactory performance, from the Company's fees.
35. The Company will be responsible for bearing the costs of acquisition and maintenance of transport and the expenses of an accountant, business stationery and any other incidentals of being in business on its own account.
36. The Company is not entitled to receive any company benefits or partake in any pension run by the Client. The Company at its own discretion may make pension provision for its directors or employees.

## LIABILITY

37. The Company shall ensure the provision of adequate employer's liability insurance, public liability insurance and any other relevant policies in respect of the Company and the delegate during the Contract of Services and shall make a copy of such policies available to the Client upon request.

## INDEMNITIES FROM THE CONTRACTOR

38. The Company shall indemnify the Client (up to the amount for which the Company is insured) against all and any claims incurred or suffered by the Client during the existence of this contract arising directly from:
  39. Any breach by the delegate or the Company of this Contract or from any negligence, wilful default or breach of duty of the delegate or the Company;
  40. Any errors, defects or malfunctions in any code, media, data, programs, software or other materials in whole or in part attributable to the negligent or wilful acts or omissions of the delegate;
  41. The Company undertakes to indemnify the Client, on demand, in respect of all liabilities, awards, costs, actions, demands, losses and expenses (including legal expenses) in connection with any action raised against the Client by the delegate in relation to the employment status of the delegate or the termination of this Contract

## TERMINATION

42. Either party for whatever reason can terminate this Contract for Services at any time upon giving **1 months** written notice to the other party
43. The Client may without notice and without liability instruct the Company to cease work on the Assignment at any time where:
  - (a) the Company or its delegate has acted in breach of the rules and regulations in operation at the Client's place of work;

- (b) the Client reasonably believes that the Company or its delegate has not observed any condition of confidentiality applicable to the Company from time to time;
- (c) the Company becomes insolvent or any order is made or resolution passed for the winding up of the Company or a receiver or administrative receiver is appointed in respect of any asset of the Company;
- (d) the Company becomes bankrupt or makes any composition with his creditors;
- (e) the delegate ceases for any reason to be employed or engaged by the Company or is unable properly to perform his duties for the Company by reason of ill-health, accident or otherwise such that the Company is unable to provide the Services for a period or periods aggregating [20 days in any 3 month period]
- (f) the delegate becomes of unsound mind or is, or may be, suffering from mental disorder and either he is admitted to hospital for treatment under the Mental Health (Scotland) Act 1984 or an order is made by any competent court for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs;
- (g) either the Company or its delegate fails or neglects efficiently or diligently to perform the Services to a satisfactory standard or is guilty of any serious or (after warning) repeated breach of its or his obligations under this Contract (including any consent granted under it);
- (h) either the Company or its delegate is guilty of serious misconduct or any other conduct (whether in the performance of the Services or otherwise) which affects or is likely to affect materially and prejudicially the interests of the Client or the delegate is convicted of an arrestable offence (other than a road traffic offence for which a non-custodial penalty is imposed)

#### **FREEDOM OF THE COMPANY TO UNDERTAKE OTHER WORKS**

44. During the period of this Contract, the Company may accept and perform engagements from or be employed by other firms or persons but only insofar as such engagement or employment does not (in the opinion of the Client) present a conflict of interest and as a consequence impinge upon its ability to provide the Services. The Company shall immediately notify the Client of any potential conflict of interest (in order that this can be removed or managed through mutual agreement) for any existing or emerging new commissions and avoid accepting work that is in any way competitive with the business of the Client without the prior written consent of the Client.

45. The Company may advertise its services in any way it sees fit and the Client shall not raise any objection. The use of the Client's name in any of the Company's advertising material is prohibited unless with the approval of the Client.
46. The Company may use a business-trading name.
47. In the event of termination of this agreement for any reason at any time you will not work for any other party in relation to this project without our written agreement for the duration of this project (including any legal disputes).

## **CONFIDENTIALITY**

48. The Company undertakes that it and its directors, employees, consultants and substitutes shall keep in the strictest confidence all details of trade secrets and secret information which may come into its possession during the completion of the Contract Works.
49. At the end of the term of this Contract for Services the Company undertakes to deliver to the Client or as directed by the Client all documents and equipment relating to the Contract Works.
50. All copyright and other intellectual property rights in all work, including all work of a preparatory or design nature, or developed or created from such work in performing the Contract Works for the Client shall be deemed to be the undisputed property of the Client. Should the Client supply any material to the Company, to which the Client owns the copyright or any other intellectual property rights, it will be supplied under license, which the Client may cancel on immediate notice. The Client may use said material or any part thereof, as the Client, in its absolute discretion, shall deem fit.
51. The Contractor undertakes that the delegate shall agree to be bound by and shall sign the Client's Confidentiality Agreement.

## **TAXATION AND NATIONAL INSURANCE**

52. The Company as an independent business is responsible for its own corporation tax.

## **BUSINESS ORGANISATION**

53. The Company will prepare invoices for all Contract Works undertaken, on a frequency confirmed in Schedule A.
54. The Company, being a business on its own account will have its own business stationery and business cards and will, if requested by the Client supply a specimen for the Client's records.
55. The Company will at all times represent itself as an independent business and will in no circumstances represent itself or hold itself out as a servant or employee of the Client. The Company hereby acknowledges it is in business



on its own account and is not part of the Client's business, or any other business.

56. The Company will maintain at its own cost appropriate independent office accommodation, telephone system, mobile telephone, fax facility and e-mail facility.

#### **INTENTION OF THE PARTIES**

57. Both parties agree and intend that this legal relationship is one of undertaking independent specialist services and specifically is not a relationship of master and servant or employer and employee.

58. The Parties to this Contract for Services specifically confirm that "the circumstances" referred to in S49(1)(c) of the Income Tax (Earnings and Pensions) Act 2003 refer to this Contract for Services and no other Agreement or Contract.

#### **LEGAL ADVICE AND OTHER MATTERS**

59. Both parties hereby acknowledge that they have had an opportunity to take independent legal advice before signing this Contract for Services.

60. Both parties acknowledge that their contractual relationship is governed by this Contract for Services as a legally binding agreement.

61. Both parties acknowledge that this Contract for Services is the whole agreement governing the contractual relationship between them.

62. Words referring to the masculine are to include the feminine.

63. This Contract is governed by the laws of Scotland, and subject to the jurisdiction of the Scottish Courts.

64. Breach of any clause or clauses in this Contract for Services will not void or annul this Contract for Services as a whole in any circumstances.

65. In the event of any dispute arising from this Contract for Services an independent solicitor or accountant will be appointed to arbitrate in the first instance.

#### **FORCE MAJEURE**

66. If either party is affected by Force Majeure it shall promptly notify the other parties of the nature and extent of the circumstances in question.

67. Notwithstanding any other provision of this Contract neither party shall be deemed to be in breach of its agreement or otherwise be liable to the other parties for any delay in performance of the non-performance of any of its obligations under this Contract to the extent that the delay or non-performance is caused by the Force Majeure of which it has notified the other

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parties, and the time for performance of that obligation shall be extended accordingly.

68. If the Force Majeure in question prevails for a continuous period in excess of one month the parties shall enter into a bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

The Parties agree and intend to be bound by this Contract for Services.

The Client:

Clarke Group, Inc Ltd

Signed:

[Redacted Signature]

Dated:

25/02/10

The Company:

[Redacted Signature]

Signed:

Anthony Rust Limited

Dated:

25/02/10

## Schedule A – Contract for Services

### **1. Details**

Details of services to be provided under this Agreement

<u>Delegate Name</u>	<u>Position</u>	<u>Reporting to</u>
Tony Rush	Commercial Advisor	Richard Jeffrey, tie Limited

### **2. Scope of Services**

General contractual advice in relation to the Edinburgh tram project.

### **3. Location of the Services**

The services will be performed at the Clients office location address at Citypoint, 65 Haymarket Terrace, Edinburgh. EH12 5HD. Or otherwise as agreed.

### **4. Agreed Rates**

The agreed rate is **£1,000** per day. This rate includes providing all services in connection with this agreement including accommodation and travel expenses to and from the location of the services.

All other expenses at cost which are reasonably and properly incurred on **tie** business must be pre-agreed with Richard Jeffrey. All receipts must be provided.

### **5. Duration**

The duration of this Agreement shall be valid from **14<sup>th</sup> December** to **12<sup>th</sup> March 2010**.

This Agreement may be extended at this rate for further periods of 3 months subject to agreement of both Parties.

The rate agreed is valid for a period of 12 months from the start date of this agreement unless the scope of the services, as agreed in Section 2, dictate a change to rate and are agreed by both parties.

**6. Normal Hours of Work**

This will be agreed by the Parties each week and will depend on work requirements. Any amendment to this will be discussed and formally notified in writing.

**7. Responsibilities**

The delegate shall report directly to **Richard Jeffrey, Chief Executive, tie Limited**

The delegate shall comply with **tie** policies, rules, regulations and codes of conduct while undertaking duties at **tie**.

The delegate will be briefed on **tie** policies, rules, regulations and codes of conduct on commencing employment by and appointed **tie** representative

**8. Payment**

**tie** shall pay for the time actually spent in performing the services at a rate of **£1,000** per day as agreed in Section 4 of this schedule.

Invoices should be submitted to the **tie** Finance Manager every 4 weeks and will be paid by **tie** within 30 days.

**9. Facilities**

**tie** will provide facilities and equipment which it deems necessary for use in connection with this Agreement.