



Ian Kendall  
Kendall Management Limited  
6-8 Richmond Hill  
Richmond-Upon-Thames  
TW10 6QX.

Date: 13<sup>th</sup> June 2006

Dear Ian

**Edinburgh Tram Network Project - Procurement Support**

This letter sets out the revisions to the existing consultancy agreement dated 20 June 2005 between **tie** Limited ("Firm") and Kendall Management Limited ("the Company") which are required to reflect the basis on which we have discussed and agreed the continued engagement of the Company (and yourself as the Company's designated consultant). The principle of this engagement on behalf of the Firm is that the Company continues to support and advise the Firm on its projects, in particular the procurement of the various contracts at the heart of a successful outcome for the implementation phase of Edinburgh tram and that the Company (and you) refrain from any activity in the marketplace which could in any way detract from the strength or balance of the procurement competitions and their delivery of commercially, financially and technically robust contracts.

The personal undertaking given by you to the Firm regarding confidentiality and restraint on personal gain connected to the Firm or City of Edinburgh Council objectives and activities shall remain in force.

Any capitalised terms in this letter shall have the same meaning as that given to them in the Agreement. The following revisions will have immediate effect:

Clause 1.2 in its entirety shall be replaced by the words:

*The Agreement shall continue uninterrupted from 1 June 2006 upon the terms and conditions stipulated in it and as specifically amended by letter of 13 June 2006 until the 31<sup>st</sup> July 2007 or such later date as the Firm may at its sole option elect, unless terminated earlier by the Firm pursuant to Clause 6.1 or Clause 6.4.*

Clause 2.1: The words "to support and advise on the Firm's projects" shall be inserted after the word "services" in the first line.

Clause 3.1 shall have the following words added:

*The Company and the Firm agree that for an initial period not exceeding 3 months from the date of the letter of 13 June 2006, the work location for the Company's consultant, Ian Kendall, shall be at the Edinburgh offices of DLA Piper and the Company agrees to abide by any reasonable requirements in connection with DLA Piper making office accommodation available.*

Clause 3.4: The word "should" in the first line shall be replaced by the word "shall" and the following words shall be added after the word "satisfaction":

*The duty of care owed by the Company to the firm shall be consistent at all times with good industry practice and the exercise of sound professional judgement prevailing for consultants performing a similar role for public sector clients on infrastructure of projects of like size, profile and complexity to the Edinburgh Tram project.*

Clause 3.7 shall be replaced by the following words:

*The Company shall have a right of substitutability of its consultant, subject always to the Firm being entitled to negotiate an appropriate adjustment to the retainer fee and hourly rate stipulated under Clause 4.1.*

A new clause 3.8 shall be inserted:

*For the duration of this Agreement, neither the Company nor its consultants shall engage on any work (either on their own account or for third parties and irrespective of capacity) connected with any aspect of the Firm's projects, other than as provided under this Agreement or as may be expressly agreed in advance and in writing by the Firm, such undertaking to automatically survive (i) in the case of any early termination of this Agreement pursuant to Clause 6.1 occurring prior to 31<sup>st</sup> July 2007 (or such other date as has been agreed as the expiry date) until the actual date of financial close following contract award by the Firm to the Edinburgh Tram Infrastructure Provider and (ii) in the case any early termination of this Agreement on other grounds, for six months or for such other period as ~~the~~ shall determine after consultation with KML. On expiry of this Agreement at term, this undertaking shall be extendable at the sole option of the Firm.*

Clause 3.8 shall become Clause 3.9 and shall read:

*Nothing in this Agreement shall be taken to imply that any employee, direct or indirect, of the Company is an employee of the Firm. On this assignment and subject to Clause 3.1, the Company will be required to agree the hours and place of work of its consultant with the Firm as provided pursuant to Clauses 3.11, 3.12 and 3.13. The Company will be responsible for all tax and national insurance contributions on remuneration and expenses incurred by its employees and/or assignees.*

Clause 3.10 shall become Clause 3.11.

Clause 3.11 shall become Clause 3.12 and the following words shall be added after the words "Chief Executive" in the second line "(or as his alternate, any director of the Firm)". The following sentence shall be also be added to Clause 3.12:

*The Company shall provide ongoing input as may be directed by the Firm counterparts as identified by the Chief Executive (or as his alternate) of the Firm.*

Clause 3.12 shall become Clause 3.13 and shall read:

*Schedule 1 to the Agreement shall be deleted.*

*The Company shall provide its services (by way of the provision of Ian Kendall) as called off by the Firm to support and advise the Firm on its projects. The Company shall not commence engagement on any work without first obtaining an explicit instruction from the Firm through the provision of a brief written estimate of hours required to produce the deliverable or work product sought and agreed. The Company shall report promptly to the Firm at any time when the 20 standard hours per month referenced in Clause 4.1 below are likely to be exceeded.*

Clause 4.1 and 4.2 shall be deleted in their entirety and shall be replaced by the following new provisions:

4.1 *The Company shall be paid a monthly retainer fee (in arrears) of £ [REDACTED]. The retainer fee shall entitle the Firm to 20 standard hours of work per month by the Company (executed by the consultant, Ian Kendall) without further payment. Any hours required by the Firm beyond the 20 standard hours shall be remunerated at a rate of £ [REDACTED] per hour against substantiated time recording kept by the Company and provided with the invoicing under Clause 4.4 and shall be payable subject to Clause 3.12 and Clause 3.13.*

4.2 *The figure and the rate in Clause 4.1 shall remain fixed for the term of the Agreement, subject only to any adjustment required by operation of Clause 3.7.*

Clause 4.3 shall be deleted in its entirety and no facilitation shall be required from or carried out by the Company or Ian Kendall.

Clause 4.4 shall become Clause 4.3 and the first sentence shall be amended to read:

*The Company shall submit itemised invoices together with a brief summary of work undertaken on a monthly basis.*

Clauses 4.5 shall become 4.4, Clause 4.6 shall become 4.5, Clause 4.7 shall become 4.6 and there shall be a new Clause 4.7 which shall read as follows:

*The provisions of this Clause 4 supersede and replace all previous discussions, correspondence, arrangements and understandings (whether written or oral) regarding remuneration and financial entitlements payable in consideration of the Company's services. With the exception of payment in respect of the months of April and May 2006 pursuant to Clause 4.5 and a one time payment of £ [REDACTED] (pounds [REDACTED]) representing an agreed sum in consideration of outstanding expense claims and all other entitlements as at the date of this letter of amendment, it is agreed that there are no other outstanding payments or accrued or conditional entitlements (whether explicit or implied) owed by the Firm to the Company under this Agreement and the Company unconditionally acknowledges that there has been full and final settlement by the Firm of all fees, commission and expenses entitlements due and payable for services rendered up to the date of this letter of amendment, whether invoiced at the date of this letter or not.*

*tie agrees to make payment as sought pursuant to the Company April and May invoices, together with the £ [REDACTED] agreed sum within 5 business days of the date of signature of this letter of amendment.*

Clause 5 (Expenses) shall be replaced by the following:

*In any month in which the Company has been engaged for 40 hours or less on instruction from the Firm, the Firm shall reimburse the Company in respect of reasonable pre-warned and documented travel, accommodation and subsistence expenses incurred by the Company uniquely as a result of the Firm requiring the availability of Ian Kendall (or the Company's consultant) on an urgent basis where insufficient notice can be provided to avoid unplanned travel. In any month in which the Company has been engaged for more than 40 hours on instruction from the Firm, the Company shall itself bear all travel and accommodation and subsistence expenses it incurs on such engagement. It is the expectation of the parties that call off by the Firm will not generate travel or accommodation expenditure for the Company. No other expenditure is reimbursable.*

Clause 6.1 (ii) shall be amended as follows:

Sub-clause (i) shall commence with the words "*If the Company is...*"

*The words "if there occurs any incapacity, failure or refusal" shall be substituted for the words "fail or refuse" in sub-clause (ii).*

Clause 6.2 Shall be replaced in its entirety by the following new clause:

*For the duration of this Agreement and for a period of 12 months following its expiry (or, if there has been an early termination, for a period of 12 months from the date of financial close after contract award to the Edinburgh Tram Infrastructure Provider), the Company shall not itself and shall procure that Ian Kendall and its Consultants shall not themselves or through other parties solicit, endeavour to entice away, interfere with or otherwise approach regarding employment or work opportunity any of the Firm's current or future employees, independent contractors or consultants (or their respective staff, employees or consultants) who are engaged on the Firm's projects (all referred to as "Key Staff"). For the avoidance of doubt, (i) this restriction shall not apply to uncommitted work capacity of any independent consultant or contractor to the Firm whose engagement with the Firm is not exclusive, provided that Company shall be responsible for ensuring that any engagement of such party for that Company is compliant with the terms of this Agreement and does not cause such party to be in breach of its agreement with the Firm, (ii) the Company shall notify the Firm promptly in the event that any Key Staff make contact with the Company or Ian Kendall by any means regarding employment or work opportunities, such notification to be given to the Firm prior to any response by the Company to such contact or approach.*

Clause 6.4 shall be modified to read:

*In the event of funding constraints from the Scottish Executive or the City of Edinburgh Council which cause significant delay this Agreement may be terminated by the Firm on two months' written notice.*

Clause 6.5 shall be deleted.

Clause 7.1 The word "*completion*" shall be replaced by the word "*expiry*" and the words '*generated by or*' shall be deleted.

For ease of reference a copy of the Agreement marked with these amendments is enclosed with this letter.

Please sign and date the enclosed copy of this letter to confirm the Company's acknowledgement of and agreement to its terms.

Yours sincerely,



Chief Executive  
For and on behalf of tie Limited

We hereby accept and acknowledge the terms of this letter of amendment and confirm the availability of Ian Kendall to undertake the assignment on our behalf.



Director  
For and on behalf of Kendall Management Limited

Date: *Zid* June 2006

## CONSULTANCY AGREEMENT

This Agreement is made the 20<sup>th</sup> day of June 2005

BETWEEN:

- (1) the "Firm": **tie limited**  
whose principal office is at Verity House, 19 Haymarket Yards, Edinburgh EH12 5BH
- AND
- (2) the "Company": **Kendall Management Limited**  
whose registered office is at [REDACTED]

**IT IS HEREBY AGREED AS FOLLOWS:**

### 1 GENERAL

- 1.1 The headings in this agreement are for ease of reference only and shall not affect the meaning of the Agreement.
- 1.2 ~~This Agreement shall commence with effect from the date it is signed by both parties and shall continue until 31<sup>st</sup> December 2005 or until terminated by either party giving notice to the other in writing under clause 7.1 hereof. The Agreement shall continue uninterrupted from 1 June 2006 upon the terms and conditions stipulated in it and as specifically amended by letter of 13 May June 2006 until the 31<sup>st</sup> July 2007 or such later date as the Firm may at its sole option elect, unless terminated earlier by the Firm pursuant to Clause 6.1 or Clause 6.4.~~

### 2 CONSULTANCY SERVICES

- 2.1 The Firm engages the Company to provide consultancy services to support and advise on the Firm's projects, and the Company agrees to provide such services upon the terms and conditions hereinafter mentioned.
- 2.2 This agreement can be novated to another subsidiary of the City of Edinburgh Council at the discretion of the Firm.

### 3 OBLIGATIONS

- 3.1 During the period of this Agreement the Company shall make its services available to the Firm at such times and at such locations as the Firm and the Company shall agree from time to time. The Company and the Firm agree that for an initial period not exceeding 3 months from the date of the letter of 13 May June 2006, the work location for the Company's consultant in connection with the consultancy services, Ian Kendall, shall be at the Edinburgh offices of DLA Piper and the Company agrees to abide by any reasonable requirements in connection with DLA Piper making office accommodation available.
- 3.2 The Company will be responsible for ensuring that it has no financial interest in the affairs of any client of the Firm for which consultancy services under this agreement are carried out.

- 3.3 The Company will declare any interest it has in or services contract with any other contractor to the Firm.
- 3.4 The Company ~~should~~ shall perform its obligations with reasonable care. In the event that the Firm or the Firm's client is dissatisfied with the Company's service, the Company shall at its own expense remedy the dissatisfaction to the Firm's satisfaction. The duty of care owed by the Company to the firm shall be consistent at all times with good industry practice and the exercise of sound professional judgement prevailing for consultants performing a similar role for public sector clients on infrastructure of projects of like size, profile and complexity to the Edinburgh Tram project. The Firm's advisers shall be entitled to rely upon the advice of the Company.
- 3.5 The Company shall provide any equipment necessary to perform the consultancy services.
- 3.6 The Company will not represent itself as an agent of the Firm, nor shall it have the authority to bind the Firm to any contracts or agreements.
- 3.7 The Company shall not offer its consultant to conduct similar services to any other organisation unless specifically agreed in advance with the Firm. The Company shall have a right of substitutability of its consultant, subject always to the Firm being entitled to negotiate an appropriate adjustment to the retainer fee and hourly rate stipulated under Clause 4.1.
- 3.8 For the duration of this Agreement, neither the Company nor its consultants shall engage on any work (either on their own account or for third parties and irrespective of capacity) connected with any aspect of the Firm's projects, other than as provided under this Agreement or as may be expressly agreed in advance and in writing by the Firm, each undertaking to automatically survive (i) in the case of any early termination of this Agreement pursuant to Clause 6.1 occurring prior to 31<sup>st</sup> July 2007 (or such other date as has been agreed as the expiry date) until the actual date of financial close following contract award by the Firm to the Edinburgh Tram Infrastructure Provider and (ii) in the case any early termination of this Agreement on other grounds, for six months or for such other period as it shall determine after consultation with KML. On expiry of this Agreement at term, this undertaking shall be extendable at the sole option of the Firm.
- ~~3.8.9~~ 3.8.9 Nothing in this Agreement shall be taken to imply that any employee, direct or indirect, of the Company is an employee of the Firm. On this assignment and subject to Clause 3.1, the Company will be free to choose required to agree the hours and place of work of its consultant with and its method of operation subject only to keeping the Firm closely and regularly informed of progress as provided pursuant to Clauses 3.11, 3.12 and 3.13. The Company will be responsible for all tax and national insurance contributions on remuneration and expenses incurred by its employees and/or assignees.
- ~~3.9.10~~ 3.9.10 No public announcements (electronic, written or oral) are to be issued or made by either the Firm or the Company in connection with the services under this Agreement unless agreed between them in writing beforehand.
- ~~3.10.11~~ 3.10.11 Without the Firm's prior written consent the Company will not assign, delegate, sub-contract or otherwise transfer the benefit or burden of this Agreement.
- ~~3.11.12~~ 3.11.12 Both Firm and Company shall nominate one person as main point of contact to and through whom all written communication will flow; for the Firm the nominee is the Chief Executive (or as his alternate, any director of the Firm), for the Company the nominee is Ian W



Kendall. The Company shall provide ongoing input as may be directed by the Firm counterparts as identified by the Chief Executive (or his alternate) of the Firm.

~~3.4.23.13~~ The Company will provide its services to assist and advise the Firm with a view to the Firm developing the Edinburgh light rail Tram project. The services supplied by the Company to the Firm will be called upon as required by the Firm over the duration of this agreement.

~~Specifically the Company will undertake the activities as set out in the attached Schedule 1 as modified and agreed from time to time. Schedule 1 to the Agreement shall be deleted.~~

~~The Company shall provide its services (by way of the provision of Ian Kendall) as called off by the Firm to support and advise the Firm on its projects. The Company shall not commence engagement on any work without first obtaining an explicit instruction from the Firm through the provision of a brief written estimate of hours required to produce the deliverable or work product sought and agreed. The Company shall report promptly to the Firm at any time when the 20 standard hours per month referenced in Clause 4.1 below are likely to be exceeded.~~

#### 4 PAYMENT

4.1 The Company will be paid on the basis of a weekly fee of £ [REDACTED]. The Company shall be paid a monthly retainer fee (in arrears) of £ [REDACTED]. The retainer fee shall entitle the Firm to 20 standard hours of work per month by the Company (executed by the consultant, Ian Kendall) without further payment. Any hours required by the Firm beyond the 20 standard hours shall be remunerated at a rate of £ [REDACTED] per hour against substantiated time recording kept by the Company and provided with the invoicing under Clause 4.4 and shall be payable subject to Clause 3.12 and Clause 3.13.

4.2 The Company will be paid an additional success fee of up to £ [REDACTED] upon the completion of success fee milestones. The success fee milestones each have a specific percentage allocation of the success fee apportioned as set out in Schedule 1 and will be complete when all necessary work is complete to achieve the milestone. In the event of partial completion of milestones and/or early termination of this agreement the amount to be paid will be agreed between the Chairman of the Firm and the Company. The figure and the rate in Clause 4.1 shall remain fixed for the term of the Agreement, subject only to any adjustment required by operation of Clause 3.7.

4.3 The Company will be paid a commission of 15% of the third party cost of providing agreed proprietary documentation. The costs paid to third parties will be agreed by the Firm and the third party upon facilitation by the Company.

4.4.3 The Company shall submit itemised invoices together with a brief summary of work undertaken on a monthly basis for any work completed in that month. The invoice shall be in a form, and containing the requisite detail, as will be agreed between the Firm and the Company.

4.4.4 The Company shall provide the Firm with a copy of its VAT registration certificate.

4.4.5 The Firm will pay the Company at the end of the second week of the month following invoice submission provided that such invoice is submitted no more than five working days after the end of that month.

4.7.6 No payment will be made in respect of holiday, sickness, pension rights, redundancy pay or other benefits.

4.7 ~~by KMI and payable in April and 4.3 and language required to reflect outcome of discussion on old Clause 4.3 is due and payable for services rendered up to the date of this letter. The provisions of this Clause 4 supersede and replace all previous discussions, correspondence, arrangements and understandings (whether written or oral) regarding remuneration and financial entitlements payable in consideration of the Company's services. With the exception of any application for payment by the Company due and payable in respect of the months of April and May 2006 pursuant to Clause 4.6 and a one time payment of £ [REDACTED] representing an agreed sum in consideration of outstanding expense claims and all other entitlement as at the date of this letter of amendment, it is agreed that there are no other outstanding payments or accrued or conditional entitlements (whether explicit or implied) owed by the Firm to the Company under this Agreement and the Company unconditionally acknowledges that there has been full and final settlement by the Firm of all fees, commission and expenses entitlements due and payable for services rendered up to the date of this letter of amendment, whether invoiced at the date of this letter or not.~~

~~He agrees to make payment as sought pursuant to the Company April and May invoices together with the £ [REDACTED] agreed sum within 5 business days of the date of signature of this letter of amendment.~~

## 5 EXPENSES

~~The Firm shall reimburse to the Company all travelling and other expenses reasonably incurred by the Company in providing the consultancy services provided that a maximum of £ [REDACTED] per month shall apply as to expenses incurred in Edinburgh and in travelling to Edinburgh. When on business for the Firm outside of Edinburgh reasonable costs will be incurred for additional costs incurred and documented by the Company, if any. In any month in which the Company has been engaged for 40 hours or less on instruction from the Firm, the Firm shall reimburse the Company in respect of reasonable pre-warned and documented travel and accommodation and subsistence expenses incurred by the Company uniquely as a result of the Firm requiring the availability of Ian Kendall (or the Company's consultant) on an urgent basis where insufficient notice can be provided to avoid unplanned travel. In any month in which the Company has been engaged for more than 40 hours on instruction from the Firm, the Company shall itself bear all travel, accommodation and subsistence expenses it incurs on such engagement. It is the expectation of the parties that call off by the Firm will not generate travel expenditure for the Company. No other expenditure is reimbursable.~~

## 6 TERMINATION

6.1 Without limitation the Firm ~~or the Company~~ may by notice in writing immediately terminate this Agreement; ~~if the Company or the Firm shall:~~

- (i) ~~if the Company be~~ is in breach of any terms of this Agreement
- (ii) ~~fail or refuse~~ there occurs any incapacity, failure or refusal to carry out the services reasonably and properly required of it hereunder.

6.2 The Company shall not, for the duration of, nor for the period of six months following termination of, this Agreement solicit, interfere with or endeavour to entice away from the Firm any individual who was at any time during the period of this agreement an employee of the Firm. For the duration of this Agreement and for a period of 12 months following its expiry (or, if there has been an early termination, for a period of 12 months from the date of

financial close after contract award to the Edinburgh Tram Infrastructure Provider), the Company shall not use and shall procure that Ian Kendall and its Consultants shall not themselves or through other parties solicit, endeavour to entice away, interfere with or otherwise approach regarding employment or work opportunity any of the Firm's current or future employees, independent contractors and consultants or their respective staff, employees or consultants who are engaged on the Firm's projects (all referred to as "Key Staff"). For the avoidance of doubt, (i) this restriction shall not apply to uncommitted work capacity of any independent consultant or contractor or the Firm whose engagement of such party with the Firm is not exclusive provided that the Company shall be responsible for ensuring that any engagement for the Company is compliant with the terms of this Agreement and does cause such party to be in breach of its agreement with the Firm, (ii) the Company shall notify the Firm promptly in the event that any Key Staff make contact with the Company or Ian Kendall by any means regarding work opportunities, such notification to be given prior to any response by the Company to such contact or approach.

- 6.3 The Company shall return to the Firm any notes, memoranda, records or other documents whether originals or copies relating to the business, finances or affairs of the Firm or its clients.
- 6.4 In the event of funding constraints from the Scottish Executive or the City of Edinburgh Council which cause significant delay this Agreement may be terminated by ~~The the~~ Firm on ~~two months' thirteen weeks' written notice.~~ The weekly fee rate applicable to such termination shall not exceed £ [REDACTED]
- ~~6.5 The Company may terminate this Agreement upon thirteen weeks' notice for any reason.~~

## 7 CONFIDENTIAL INFORMATION

- 7.1 The Company agrees to treat as confidential all information not in the public domain and upon termination or ~~completion expiry~~ of this Agreement to return all copies of information received, but for the avoidance of doubt this does not apply to information generated by or sourced by the Company in undertaking this Agreement.

## 8 NOTICE

- 8.1 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served by sending the same by registered post or recorded delivery to the last known address of the party ~~of by~~ the other party and any receipt issued by the postal authorities shall be conclusive evidence of the fact and date of posting of any such notice.

## 9 APPLICABLE LAW

This Agreement shall be governed by, and construed in accordance with, Scottish law.

I accept the terms and conditions of engagement as detailed above.

Signature: ..... Date: .....

Name: .....

Signed for and on behalf of Kendall Management Ltd.

Signature:..... Date:.....

Name:.....

Signed for and on behalf of **tie** limited

