



EDINBURGH TRAM NETWORK

ALLOCATION OF CONTRACTUAL RISKS IN THE DRAFT INFRACO CONTRACT

14 DECEMBER 2007

Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
[2.2] Failure to serve notice to propose extension no later than 180 days prior to expiry date.	✓		
[3.5] Termination by either party due to failure to satisfy a CP within 3 months of Effective Date which is not waived.	✓	✓	
[4.4/7.4] Discrepancies, errors or omissions in or between the Infraco Proposals and the Employers Requirements.		✓	
[4.5] Failure to bring discrepancies or requirements for further information in relation to documents to the attention of tie's Representative.		✓	
[6.1/6.3] Failure to cooperate in order to facilitate carrying out the Infraco Works.			✓
[6.3.1] Failure to approach all Permitted Variations on a collaborative and Open Book Basis.			✓
[6.3.2] Failure to use reasonable endeavours to avoid unnecessary complaints, disputes and claims against the other Party.			✓
[6.3.3] Failure to comply with Dispute Resolution Procedure in relation to any such complaints, disputes and claims with or against the other Party.			✓
[6.3.4] Interference with the rights of the other Party in performing its obligations under the Infraco Contract, or in any other way hindering or preventing the other Party from performing those obligations or from enjoying the benefits of its rights.			✓
[6.3.5] Failure to take reasonable steps to mitigate any foreseeable losses and liabilities of the other Party which are likely to arise out of any failure by the non complying party to take the steps listed in 6.3.2 to 6.3.4 above.			✓
[6.3.6] Failure to take reasonable steps to manage, minimise and mitigate all costs.			✓
[6.5] Failure of senior representatives to meet quarterly to discuss proposals to minimise cost and optimise quality or to discuss matters which may adversely affect the Infraco Works, the ETN, CEC or the performance of the Infraco Contract.			✓

Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
[6.8] Failure to procure the attendance of any of the Infraco Parties as required by tie at the quarterly meetings describe in 6.5 above.		✓	
[5] ¹ Failure to adequately inspect the Site and to satisfy and take account of the following: - the ground conditions on the Site; - all relevant safety requirements and environmental matters; - the form and nature of the Site; - the nature of the materials to be excavated; - the extent and nature and difficulty of the work and materials necessary for the completion of the Infraco Works; - the quality of any existing structures which will form part of, be adjacent to or be associated with the ETN; - risk of injury or damage to property adjacent to the Site and to occupiers of such property; - possibility of interference from parties other than tie ; - the precautions, times and methods of working necessary to comply with the Code of Construction Practice and Code of Maintenance Practice and, in accordance with Good Industry Practice to minimise and nuisance or interference; - use by third parties of land being part of or adjacent to the ETN; - means of communication with and restrictions of access to the Site; - accommodation required by Infraco; - generally to obtain all necessary information as to risks, contingencies and other circumstances influencing or affecting the Infraco Works.		✓	
[7.1] Failure to perform the Infraco Works fully and faithfully in accordance with the Infraco Contract.		✓	
Failure to carry out the works: <ul style="list-style-type: none"> • [7.2] using a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent professional contractor experienced in carrying out works and services of a similar nature to the Infraco Works; • [7.3.1] in accordance with the Infraco Contract; • [7.3.2] so as to enable the ETN to be designed, constructed, installed, tested and commissioned, and thereafter operated and maintained; • [7.3.3] in accordance with the Infraco's quality management system and plans; 		✓ ✓ ✓	

¹ Subject to ability of BBS to price for Existing Structures risk

Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
<ul style="list-style-type: none"> • [7.3.4] in compliance with the Employer's Requirements; • [7.3.5] in compliance with the Infraco's Proposals; • [7.3.6] in accordance with tie and CEC policies; • [7.3.7] in accordance with the Code of Construction Practice; • [7.3.8] in accordance with the Code of Maintenance Practice; • [7.3.9] in compliance with the Tram Legislation; • [7.3.10] in compliance with applicable Laws, Land Consents and Consents; • [7.3.11] using reasonably practicable means to ensure impacts are no worse than residual impacts as identified in the Environmental Statements; • [7.3.12] in compliance with environmental regulations and requirements; • [7.3.13] in accordance with Good Industry Practice; • [7.3.14] to ensure that the design of the ETN is buildable; • [7.3.15] to provide assistance to tie in ensuring best value; • [7.3.16] to not wilfully detract from image of tie, TEL, CEC, the Scottish Ministers, Transport Scotland or the ETN; • [7.3.17] in accordance with OGC's "Excellence in Construction" initiative; • [7.3.18] to ensure sustainability of the ETN in relation to energy consumption and the supply of materials from sustainable resources; • [7.3.19] in a manner not likely to be injurious to persons or property; • [7.3.20] using Key Personnel. 		<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ 	
[7.5.1] Failure to use reasonable endeavours to maximise construction productivity by reference to international best practice.		✓	
[7.5.2] Failure to use reasonable endeavours to minimise disruption to the city of Edinburgh.		✓	
[7.5.3] Failure to use reasonable endeavours to maintain safety and minimise the potential for accidents and safeguard the Infraco Works.		✓	
[7.5.4] Failure to use reasonable endeavours to safeguard the efficiency in the obtaining of Consents.		✓	
[7.5.5] Failure to use reasonable endeavours to minimise costs.		✓	
[7.6] Failure to keep itself fully informed about current professional and technical standards and about all matters relating to, or which might have a bearing on, the Infraco Works.		✓	
[7.8] Failure to fully understand the scope and extent of requirements and sufficiency of information to complete the Infraco Works.		✓	

Risk : General Obligations Clauses	Allocation		
	Public Sector	Private Sector	Shared
[7.9-7.10] ² Content, completeness, currency, accuracy or fitness for any purpose of Background Information supplied by tie or any of its stakeholders, subject to fraudulent statements or fraudulent provision of information by tie .		✓	
[7.11] Failure to liaise with any party, as required, to produce information required so that the Infraco Works can be progressed properly, according to Programme and in accordance with the Infraco Contract.		✓	
[7.12] Failure to liaise with regard to material types, methods and programmes, cost effectiveness and temporary works in respect of any Permitted Variation.		✓	
[7.13] Failure to provide all labour, goods, materials, Infraco's Equipment, Temporary Works, transport to and from the Site and everything else of a temporary or permanent nature required in respect of the Infraco Works which is either required in the Infraco Contract or which could have reasonably been foreseen by an experienced contractor.		✓	
[7.14] Failure to ensure the adequacy, stability and safety of all site operations and methods of construction.		✓	
[7.15] Use or specification for use of any materials which are known to be deleterious or contravene any relevant standard or code of practice (including Ove Arup & Partners guidance or Good Industry Practice)		✓	
[7.16] Use of or installation on the Edinburgh Tram Network of materials which are not in accordance with the Employer's Requirements on the date of such use or installation.		✓	
[7.17] Failure to notify tie of any ground, geophysical or other surveys which the Infraco intends to carry out.		✓	
[7.18] Failure to notify tie of any Abortive Work.		✓	
[26.17] Failure of the Infraco, Key Personnel, staff and Infraco Parties to comply with all regulatory requirements and tie's Drug and Alcohol Policy.		✓	

Risk : System Integration	Allocation		
	Public Sector	Private Sector	Shared
Failure to implement: <ul style="list-style-type: none"> • [8.1.1] work to define sub-system performance and demonstrate that the System Availability Target can be met; • [8.1.2] management of technical interfaces including system wide issues such as electro-magnetic compatibility and stray current protection, noise, vibration and wheel/rail interface; • [8.1.3] test management, including the preparation of method statements, test scripts, the setting of pass/fail criteria, and 		✓	

² Subject to alignment of Background Information with Employer's Requirements.

Risk : System Integration	Allocation		
	Public Sector	Private Sector	Shared
analysis; <ul style="list-style-type: none"> • [8.1.4] alignment of operations and maintenance procedures; • [8.1.5] system activation; • [8.1.6] safety assurances and the Case for Safety; • [8.1.7] a requirements traceability matrix. 		<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ 	
[8.2] Failure to ensure that Trams and engineers works vehicles are fully integrated with the Infraco Works.		✓	
[8.3] Failure to carry out all of the system integration activities described in the Employer's Requirements and Infraco's Proposals.		✓	
[8.4] Failure to liaise with the Operator and tie in respect of system operation and related design, Systems Acceptance Tests and operational defects.		✓	
[8.5] Failure to ensure that design is compatible with system integration throughout the Term.		✓	
[8.6] Failure to manage configuration control of the ETN.		✓	
[8.7] Failure to procure that the Tram Supplier complies with specific obligations (mock up, testing, safety etc).		✓	

Risk : Infrastructure and Equipment	Allocation		
	Public Sector	Private Sector	Shared
[9.1] Failure to pay the Infraco resulting in the title in all materials, goods and equipment not transferring to CEC.	✓		
[9.1] Failure to transfer title to CEC in all materials, goods, and equipment intended to form part of the ETN.		✓	
[9.1] Failure to deliver or install materials following advance payment including risk of insolvency of suppliers.		✓	
[9.2/9.3/9.4] Failure to clearly identify, separate and label project assets as the property of CEC, whether on sit or off site. Failure to include such provisions in sub-contracts.		✓	
[9.5] Failure to procure that CEC pursues claims against suppliers of defective or faulty materials which have vested in CEC and to reimburse Infraco of all costs recovered.	✓		
[9.6/9.7.1] Failure to procure that the Tram Supplier transfers title to CEC in the Trams (free from all Security Interests) or Tram Related Equipment.			✓
[9.8] Compatibility of all infrastructure, equipment and systems and fitness for purpose (as defined complaint with the Employer's Requirements), excluding items free issued to the Infraco by tie.		✓	
[9.9/9.10] Euro Compliance of equipment, excluding items free issued to the Infraco by tie.		✓	
[9.11] Malfunction, non-operability, late delivery, removal or	✓		

Risk : Infrastructure and Equipment	Allocation		
	Public Sector	Private Sector	Shared
replacement of free issue fare collection equipment.			
[9.12] Failure to make the Trams and any materials (in which title has passed to tie or CEC) available to the Infraco for performance of its obligations.	✓		

Risk : Bonds, Guarantees and Collateral Warranties SUBJECT TO RESOLUTION OF COMMERCIAL DISCUSSIONS	Allocation		
	Public Sector	Private Sector	Shared
NOTE: These discussions are based upon advanced drafts. We have no reason to expect that satisfactory close out cannot be achieved by late January 2008.			
PCG		✓	
Bond		✓	
Collateral Warranties		✓	
CEC guarantee	✓		

Risk : Deliverables	Allocation		
	Public Sector	Private Sector	Shared
[10.1] Failure to prepare Deliverables in accordance with the Infraco Contract and Programme.		✓	
[10.2] Failure to submit any Deliverables associated with any Permitted Variations to tie's Representative for review pursuant to the Review Procedure.		✓	
[10.3] Failure to allow tie's Representative reasonable opportunity to review any Deliverable at any stage of development.		✓	
[10.4] Failure to provide Deliverables in format required for tie extranet and failure to establish/maintain such an extranet.		✓	
[10.5/10.6] Failure to prepare a Submittal Programme which meets the Programme and submit same to tie and advise of revisions.		✓	
[10.6/10.7] Failure to comply with the Submittal Programme timescales			✓
[10.7] Introduction of alternative Submittal Programme where tie cannot comply with the original programme (not arising from Infraco default).	✓		
[10.8] Failure to give due consideration to tie or tie's Representative at a meeting called by tie or tie's Representative to discuss the development of a Deliverable and failure to submit a report detailing such discussions.		✓	
[10.9] Amendment to a Deliverable where such Deliverable does not meet the requirements of the Infraco Contract.		✓	

Risk : Deliverables	Allocation		
	Public Sector	Private Sector	Shared
[10.9] Amendment to a Deliverable where such Deliverable does not meet the requirements of any "Approval Bodies".	✓	✓	
[10.10] Failure to provide Deliverables in accordance with the Infraco Contract.		✓	
[10.11] Provision of further Deliverables as requested by tie .	✓		
[10.12/10.13] Risks from conflicts, ambiguities, discrepancies, errors or omissions in or between Deliverables and proposing and carrying out resolution.		✓	
[10.14] Failure to ensure the Deliverables comply with document control requirements.		✓	
[10.15/10.16] Establishment, staffing and making available for tie's inspection of an office to store record of performance of the Infraco Works, drawings for construction, all specifications, all transactions entered into in relation to Permitted Variations and claims for additional costs or expenses.		✓	
[54.4/54.5] Failure to write up, maintain and store Technical Records in respect of Maintenance Services or in a format reasonably specified by tie .		✓	
[54.6] Maintenance, security, bugs etc in relation to the Infraco's computer systems and equipment		✓	

Risk : Novation and Other Key Interfaces	Allocation		
	Public Sector	Private Sector	Shared
[11.1] Failure of the Infraco to execute the novation agreement.		✓	
[11.1] Failure of tie to create the novation agreement and procure the execution of the same by SDS Provider.	✓		
[11.2.1] Failure of the Infraco to procure and provide to tie a collateral warranty from the SDS Provider.		✓	
[11.3] Failure to procure that the SDS Provider carries out and completes the SDS Services.		✓	
[11.4] Management of the performance of the SDS Services and resultant liability.		✓	
[11.5] Amendment of the SDS Agreement.	✓	✓	
[11.6] Failure to procure the attendance of the SDS Provider at any meeting in relation to the Infraco Works.		✓	
[11.7] Failure to procure performance of additional services required from the SDS Provider following a request from tie .		✓	
[11.7] Requirement for additional services from SDS.	✓		
[11.8] Termination of the SDS Agreement without the consent of tie .		✓	
[11.9] Failure, if required by tie , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the SDS Agreement		✓	

Risk : Novation and Other Key Interfaces	Allocation		
	Public Sector	Private Sector	Shared
to tie , the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the SDS Agreement by such a person.			
[11.9] Failure to assist in obtaining a collateral warranty from SDS where novation, assignation or other transfer has taken place.	✓		
[12.1] Failure to enter into a novation agreement with tie and the Tram Supplier.		✓	
[12.2] Failure to procure that the Tram Supplier enters into a collateral warranty in favour of tie and to deliver same to tie .		✓	
[12.3] Failure to procure that the Tram Supplier carries out and completes the Tram Supply Obligations in accordance with the Tram Supply Agreement.		✓	
[12.4] Management of the performance of the Tram Supply Obligations and resultant liability.		✓	
[12.5] Amendment to the Tram Supply Agreement (including the Tram Supply Obligations).	✓	✓	
[12.6] Failure to procure the attendance of the Tram Supplier at any meeting in relation to the Infraco Works		✓	
[12.7] Failure to use reasonable endeavours to procure supply of additional Trams, spare parts and services following a request from tie .		✓	
[12.7] The requirement for additional Tram Supply services.	✓		
[12.8-12.14] Termination of Tram Supplier or rectification of its defective performance.	✓	✓	
[12.15] Failure, if required by tie , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to tie , the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person.		✓	
[12.15] Failure to assist in obtaining a collateral warranty from Tram Supplier where novation, assignation or other transfer has taken place.	✓		
[13.1] Failure to enter into a novation agreement with tie and the Tram Maintainer.		✓	
[13.2] Failure to procure that the Tram Maintainer enters into a collateral warranty in favour of tie .		✓	
[13.3] Failure to procure that the Tram Maintainer carries out and completes the Tram Maintenance Services in accordance with the Tram Maintenance Agreement.		✓	
[13.4] Management of the performance of the Tram Maintenance Services and resultant liability.		✓	
[13.5] Amendment of the Tram Maintenance Agreement.	✓	✓	

Risk : Novation and Other Key Interfaces	Allocation		
	Public Sector	Private Sector	Shared
[13.6] Failure to procure the attendance of the Tram Maintainer at any meeting in relation to the Infraco Works.		✓	
[13.7] Failure to use reasonable endeavours to procure that the Tram Maintainer shall supply any additional spare parts and/or perform any additional services which are required by tie in respect of the ETN.		✓	
[13.8-13.16] Termination of Tram Maintainer or rectification of its defective performance.	✓	✓	
[13.17] Failure, if required by tie , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to tie , the Operator, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person.		✓	
[13.17] Failure to assist in obtaining a collateral warranty from Tram Maintainer where novation, assignation or other transfer has taken place.	✓		
[14.1] Failure to carry out and complete the Infrastructure Maintenance Services.		✓	
[14.2] Failure to ensure sub-contract to a replacement maintainer is in the form of the IMA. ³		✓	
[14.3] Failure, if required by tie , on termination or expiry of the Infraco Contract to novate, assign or otherwise transfer the Tram Supply Agreement to tie , the Scottish Ministers, CEC or their successors with no worse financial standing than tie or to any other person whose obligations are unconditionally guaranteed under the Tram Supply Agreement by such a person.		✓	
[16.2] ⁴ Risks arising through the Asset Protection Agreement. NOTE: If this agreement is not settled prior to contract award, Infraco may seek a tie change.	✓	✓	

Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
[17.2] Occurrence and costs to the Infraco of an Operator Event to the extent the Infraco has not materially contributed to such event.	✓		
[17.3/17.4/17.7] Failure to mitigate (at reasonable inconvenience and cost), notify tie of or maintain reports of an Operator Event or matters which may precede an Operator Event.		✓	
[17.5] Arranging meeting and obtaining Operator's cooperation with agreed corrective measures following an Operator Event.	✓		

³ Handback bond arrangements to be confirmed

⁴ BBS position reserved pending due diligence.

Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
[17.8] Failure to, from the date of the Agreement, take into account comments of the Operator when refining Design and failure to deliver Infraco comments on functional and maintainability issues to tie and the Operator.		✓	
[17.9] Obstruction of the Operator in respect the Operator Maintenance Plan and Maintenance Services .		✓	
[17.9] Obstruction by the Operator of the Infraco in respect of the Maintenance Services.	✓		
[17.10] Failure to observe the Operator's Representative's instructions.		✓	
[17.11-13] Failure to notify and co-operate with tie and the Operator and minimise the adverse consequences of Operator Maintenance, Maintenance Services and any planned or unplanned works or activities, including support in providing alternative transport and notifying passengers.		✓	
[17.14-17.17] Failure to comment, provide a report on and carry out modifications as a result of a DPOFA Change.		✓	
[17.18.1] Failure to provide a representative for the Project Safety Certification Committee.		✓	
[17.18.2.1/51.2] Failure to liaise with the Independent Competent Person, HMRI and the Emergency Services.		✓	
[17.18.2.2] Failure to develop and implement the Infraco Safety Management System.		✓	
[17.20/17.21] Failure to complete safety and service readiness verification each morning and to certify this to tie and the Operator.		✓	
[17.22] Failure to liaise effectively with the Operator in the co-ordination of health and safety issues at the Depot.		✓	
[17.23] Failure to give the Operator and tie a minimum of one month's notice of any planned lifecycle maintenance forming part of the Maintenance Services to be carried out on any part of the ETN.		✓	
[17.24] Failure to provide tie and the Operator with a combined maintenance plan not less than 6 months prior to the Planned Service Commencement Date, subject to supply to the Infraco of the Operator Maintenance Plan 12 months prior to the Planned Service Commencement Date.			✓
[17.25-17.27] Failure to provide technical advice and information to the Operator during normal working hours; failure to provide reasonable works/site access to Operator and tie ; interference with Operator mobilisation.		✓	
[17.27/17.28] Interference with Infraco while on Site; failure to comply with safety procedures on site; damage to the Infraco Works caused by the Operator or tie (unless fair wear and tear or due to operations in accordance with the Operations and Maintenance Manual).	✓		
[17.29] Failure to work closely and effectively with the Operator to complete the System Acceptance Tests and related obligations on testing and commissioning.		✓	
[17.31] Failure of the Infraco to work collaboratively with the Operator			

Risk : Operator Interface	Allocation		
	Public Sector	Private Sector	Shared
and failure of the Operator to work collaboratively with the Infraco to: <ul style="list-style-type: none"> [17.31.1] maximise productivity during the Infraco Works and minimise disruption for the public and third parties; [17.31.2] ensure the delivery of complete system integration; [17.3.3] satisfy levels of technical systems availability; [17.31.4] minimise and give the best advance notice of interruption to Transport Services; [17.31.5] not hinder proper performance of the Project Development Services, Project Operations and obligations under the Infraco Contract; [17.31.6] support adherence to timetables and the Programme; [17.31.7] report promptly any proposed change permitted under the DPOFA or the Infraco Contract and related mitigation; [17.31.8] use reasonable endeavours to minimise likelihood of interface disputes. 	✓	✓	
[17.32] Claims against tie by the Operator pursuant to DPOFA due to Infraco delay in performance of its obligations.		✓	

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[18.1/18.20] Failure to provide appropriate licence and the necessary Land Consents to enter and remain upon the Permanent Land.	✓		
[18.2] Encroachment, design or construction of ETN on any land outside of the Permanent Land and Temporary Sites without the consent of tie .		✓	
[18.3/18.6/18.17] Breach of a Land Consent due to breach of the agreement or wilful act or omission or the use of Temporary Sites outside that specified in the Acts.		✓	
[18.4] Failure to give tie not less than 40 days' notice where access is required to any Temporary Site for the purposes of carrying out the Infraco Works.		✓	
[18.5] Failure to provide access to the Temporary Sites following 40 days' notice having been given by the Infraco.	✓		
[18.7/18.8] ⁵ Failure to minimise period of possession of Temporary Site, or failure to quit occupation of such Temporary Site after 28 days (3 months where a Site Office has been established) following the completion of the Infraco Works to such Temporary Site.		✓	
[18.9] Failure to give notice of the vacation of a Temporary Site.		✓	

⁵ **tie** to revert after checking with Land Team.

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[18.10] Failure to remove all temporary works from a Temporary Site and restore the land to the reasonable satisfaction of the land owner.		✓	
[18.10.1] Demolition of a building or any part thereof without the consent of tie.		✓	
[18.10.2] Failure to provide tie with sufficient evidence (including a detailed record of the condition of the land both before and after the occupation of the Temporary Site) to show that restoration obligations have been complied with.		✓	
[18.11] Possession to be in accordance with the Third Party Agreements.		✓	
[18.12] Failure to provide notice of temporary possession for maintenance purposes, excluding where any Building Fixing Agreement contains a right for the Infraco to enter onto any land.		✓	
[18.13] Failure to give possession of land for maintenance purposes under section 27(1) of the Tram Acts.	✓		
[18.14.1] Breach of requirement to be less than 20m away from Infraco Works;		✓	
[18.14.2] Breach of reasonable requirements in connection with maintenance.		✓	
[18.14.3] Breach of requirement to avoid possession of houses or gardens.		✓	
[18.14.3] Breach of requirement to avoid possession of occupied buildings.		✓	
[18.15/18.21] Provision of additional access, land, rights, facilities and/or Land Consents which are required by the Infraco outside the Permanent and Temporary Land.	✓	✓	
[18.16] Failure to use reasonable endeavours to provide assistance to tie in the provision and amendment of Land Consents.		✓	
[18.19] Breach of obligations under Schedule 13 (Third Party Agreements). ⁶ NOTE: any Third Party Agreements disclosed post Award may be treated as a tie change.		✓	
[18.22-18.24] Failure to obtain access to land required for Accommodation Works.	✓	✓	
[19.1] ⁷ NOTE: CLAUSE TO BE REWORKED FOLLOWING AGREEMENT ON RISK ALLOCATION FOR CONSENTS Failure to obtain, maintain and implement all Consents which may be required to carry out and complete the Infraco Works. NOTE: drafting currently places consent risk with tie, not Infraco.			✓
[19.2] Failure to provide copies of Consents to either Party's Representative			✓
[19.4] Cost of obtaining and maintaining in effect the Traffic	✓		

⁶ Not agreed, subject to commercial discussions as to what is included in this obligation.

⁷ Consents responsibility under discussion.

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
Regulation Orders			
[19.5] Failure to provide reasonable assistance to tie in obtaining and maintaining in effect the Traffic Regulation Orders		✓	
[19.6] Failure to update the Consents Programme by each Reporting Period End Date and to obtain any new Consents			✓
[19.9] Failure to give all notices and pay all fees required to be given or paid by Law in relation to the Infraco Works			✓
[19.10-19.12] ⁸ Failure to comply with Special Requirements of any Approval Bodies affected by the Infraco Works, provided tie has notified the Infraco of these ⁹			✓
[19.14] Failure to use reasonable endeavours to obtain written consent of adjoining or neighbouring landowners with regard to interference with their rights.	✓		
[20.1] NOTE: SUBJECT TO AGREEMENT ON BFAs Failure to submit the Proposals to tie at least 6 months prior to the date on which the Infraco proposes to install, maintain, modify or replace any relevant supporting infrastructure and to obtain tie's consent to the Proposals		✓	
[20.1.2] Failure to submit the necessary applications and obtain necessary Consents			✓
[20.2/20.4] Failure to submit revised proposals		✓	
[20.3] tie to obtain Consents and Building Fixing Agreements	✓		
[20.5] Where a building fixing agreement is to be used, securing the consent of the Heritable Proprietor and any other relevant party to allow the Infraco to carry out a survey and securing the agreement of the Heritable Proprietor to allow the setting of such building fixings (both at Infraco cost)		✓	
[20.6] Failure to inform the Infraco of failure to obtain the consent of the relevant Heritable Proprietor	✓		
[20.7] Where necessary due to the Heritable Proprietor withholding its consent to building fixings, the responsibility for and cost of the procedure of application to the sheriff pursuant to the Acts or submittal of alternative plans		✓	
[20.8] Failure by tie to respond within 10 days stating its preferred method for supporting the OLE	✓		
[20.9] Failure to procure that CEC uses all reasonable endeavours to assist the Infraco in the procedure for application to the sheriff pursuant to the Acts ¹⁰	✓		
[20.9.1] Rejection of application by sheriff, revised proposals are an Infraco change		✓	
[20.9.2] If the Section 16(4) route not used, then tie change	✓		

⁸ Special requirements schedule required.

⁹ Costs of compliance with Special Requirements are borne by **tie** as a **tie** change.

¹⁰ Note that although **tie** shall procure that CEC offers such assistance, this will be at Infraco's cost

Risk : Land Issues and Consents	Allocation		
	Public Sector	Private Sector	Shared
[20.11] This provision conflicts with Clause 20.3		?	
[20.12] Cost of removal of a building fixing and installation of OLE pole	✓		
[20.13] Selection of method for supporting OEL where building cannot support the loadings of a building fixing		✓	
[21.4] Failure to obtain any street works licence, road opening permit and any other consent, licence or permission (other than any Land Consents) that may be required for the Infraco Works.		✓	
[21.5] Failure to give notice to a relevant authority of its proposal to commence any work and failure to provide assistance to tie to recover contributions from the utilities.		✓	
[21.6] Third Party Works being carried out by a utility, roads authority or an authorised third party.	✓		
[22.1] Adverse physical conditions and artificial obstructions, subject to information being provided.		✓	
[22.5] Discovery of unidentified utility apparatus or contaminated land which could not have been reasonably foreseen or unexploded ordnance.	✓		
[22.5] Discovery of unidentified utility apparatus or contaminated land which could have been reasonably foreseen or unexploded ordnance.		✓	
[23] Failure to provide tie and tie's Representative and any person authorised by tie or tie's Representative with access upon reasonable prior notice to any site, workshop or facility etc during normal working hours.		✓	
[23] Failure to comply with rules and regulations when on such sites.	✓		
[24.1/24.2] Failure to execute the Depot Licence and comply with the terms thereof.		✓	
[24.4] Condition or fitness for purpose of the Depot.		✓	
[24.5] Liability for death, injury, damage to property or any other liability resulting from use of the Depot.		✓	
[24.6] Disruption of the Infraco's performance by tie accessing the Depot.	✓		

Risk : Sub-Contracting and Personnel	Allocation		
	Public Sector	Private Sector	Shared
[28.2/28.3] Sub-contracting of part of the Infraco Works without tie's consent except in respect of the SDS Provider, Tram Supplier, Tram Maintainer and any approved sub-contractor and/or trades and failure to provide information to enable tie to make a decision.		✓	
[28.4] Failure to incorporate required contract terms into subcontracts to be entered into by agreed "Key Sub-Contractors" or where the terms of the subcontract would result in the Infraco not being able to perform its obligations.		✓	

Risk : Sub-Contracting and Personnel	Allocation		
	Public Sector	Private Sector	Shared
[28.5] Failure to provide such skilled technical assistants and labour as required for execution of the Infraco Works.		✓	
[28.6] Misconduct, incompetence, negligence or non-compliance with safety precautions of any employee of the Infraco and/or a Sub-Contractor.		✓	
[28.7] Failure to use reasonable endeavours to provide Key Sub-Contractor collateral warranties to tie in favour of tie and/or in favour of CEC, BAA, TEL and Network Rail (any other party must be identified prior to Award).		✓	
[28.8] Failure to use reasonable endeavours to procure that any Sub-Contractor shall within 40 business days of any reasonable request by tie provide to tie a collateral warranty.		✓	
[28.9] Failure in performance by Sub-Contractors.		✓	

Risk : Performance of the Works	Allocation		
	Public Sector	Private Sector	Shared
[25.1] Failure to observe the reasonable instructions of tie's Representative.		✓	
[25.1 and 25.7] Failure to monitor the Infraco Works and failure to inform Infraco of the identity of tie's Representative.	✓		
[26] Acts or omissions of the Infraco's Representative.		✓	
[26.1] Failure to provide sufficient superintendence to the Infraco Works.		✓	
[26.2/26.5/26.7] Failure to obtain/retain tie's approval of the Infraco's Representative or his deputy.		✓	
[26.3] Supervision, management and coordination of the Infraco Works to ensure completion of the Infraco Works.		✓	
[26.8] Replacement of the Infraco's Representative.		✓	
[26.9/26.10] Failure to provide sufficient staff and involve the Key Personnel in the Infraco Works.		✓	
[26.12] Failure to ensure that there are no changes to the Key Personnel without tie's prior written consent and that any replacement persons shall be of at least equivalent status an ability to the person whom they replace.		✓	
[26.13] Failure to use all reasonable endeavours to ensure the continuity of the personnel assigned to perform the Infraco Works and to carefully select Key Personnel having careful regard to their existing work load and other planned commitments.		✓	
[26.14] Failure to ensure that Key Personnel have the requisite level of skill, experience and authority and receive the necessary amount of training and supervision.		✓	
[26.16] Contracting of or retention of as an adviser or consultant any person currently or previously employed or engaged in the previous 3		✓	

Risk : Performance of the Works	Allocation		
	Public Sector	Private Sector	Shared
months by tie without the prior written approval by tie .			
[26.17] Failure of Key Personnel and other staff to comply with regulatory requirements and tie's drug and alcohol policy.		✓	
[26.18] Allowing the consumption of, or work of under, the influence of alcohol or drugs or the giving, selling or bartering of the same.		✓	
[27.1] Failure to employ careful, skilled and experienced staff or site supervisors with CSCS (or equivalent) certification.		✓	
[27.2] Misconduct, incompetence, negligence or non-compliance with safety precautions of any person employed on the Infraco Works.		✓	

Risk : Construction	Allocation		
	Public Sector	Private Sector	Shared
[29.1 and 29.2] Errors in the position, levels, dimensions or alignment of any setting out of the Infraco Works during progress of Infraco Works.		✓	
[30.1] Failure to have full regard to safety of all persons entitled to be on Site and to keep the Site in an orderly state to avoid danger to such persons.		✓	
[30.2] Failure to provide required lights, guards, fencing etc.		✓	
[30.3] Failure to comply and use reasonable endeavours to ensure others comply with health and safety legislation and requirements.		✓	
[31.1 and 31.2] Failure to take full responsibility for the care of the Infraco Works from the Effective Date until, in relation to each Section, the date of issue of a Certificate of Sectional Completion in relation to that Section including rectification for loss or damage.		✓	
[32.1] Failure to comply with the Code of Construction Practice and Code of Maintenance Practice regarding maintenance of access to properties, bus stops and bus services and the closure of roads.		✓	
[32.2] Failure to minimise nuisance, inconvenience or interference to the business or operations of the owners, tenants of properties on or in the locality of the Site, bus operators and to the public generally and failure to comply with the Code of Construction Practice and Code of Maintenance Practice in this regard.		✓	
[33.1] Failure to use reasonable means to prevent roads or bridges being subjected to extraordinary traffic by the Infraco.		✓	
[33.1] Failure to select routes and use vehicles to as far as possible avoid unnecessary damage to roads and bridges.		✓	
[33.2] Strengthening bridges or altering or improving any highway connecting with the Site to facilitate installation of the Trams, the Infraco's Equipment or Temporary Works.		✓	
[33.2 and 33.3] Claims for damage to highways or bridges caused by the installation of Trams, Infraco's Equipment or Temporary Works.		✓	
[34.1] Failure to construct and complete the Infraco Works in strict accordance with the Agreement and in strict compliance with tie's		✓	

Risk : Construction	Allocation		
	Public Sector	Private Sector	Shared
instructions.			
[34.2] Failure of the materials, Infraco's Equipment, labour, mode and manner of construction being in accordance with the Infraco Contract.		✓	
[34.3] Time and cost (Compensation Event) if tie's instructions result in any delay or disruption or cost to the Infraco unless they result from the Infraco's default.	✓		
[39] Discovery of Fossils and Antiquities (including historical human remains) on Site.	✓		

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
<p>Failure to carry out all maintenance, repair, renewals and remedial works to the ETN as is necessary to:</p> <ul style="list-style-type: none"> • [52.1.1] maintain the ETN in accordance with the Maintenance Programme and the Maintenance Plan; • [52.1.2] ensure that the requirements of the Maintenance Specifications are met at all times; • [52.1.3] comply with the Operator Procedures; • [52.1.4] ensure that tie is informed of any adverse impact of design, redesign or modification to the Infraco Works; • [52.1.5] ensure that no maintenance or repair work shall prejudice to the Care for Safety; • [52.1.6] not prejudice the health or safety of or unreasonably interfere with the duties of the Operator and third parties or expose tie liability under health and safety legislation; • [52.1.7] maximise the extent to which the ETN is available and to minimise interruption to availability; • [52.1.8] sustain the functionality of the component parts of the ETN for not less than the design life; • [52.1.9] hand back the ETN in a condition consistent with the Infraco having complied with Clause 52 (<i>Maintenance</i>) provided save for fair wear and tear or the expiry of working life. 		<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ 	
[52.2/52.3] Failure to work with Operator in respect of daily handover and handback.		✓	
[52.5] Failure to carry out Mobilisation Services on or before the appropriate Mobilisation Milestone Dates.		✓	
[52.6] Failure to carry out the Maintenance Services safely and efficiently and free of any reasonably avoidable risk of pollution, nuisance, interference or hazard.		✓	
[52.7] Failure to employ and train all staff necessary to perform the Maintenance Services in accordance with the Infraco Contract.		✓	

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
[52.8] ¹¹ Failure to provide and employ all staff necessary to perform the Mobilisation Services in accordance with the Infraco Contract.		✓	
[52.9] Failure to supply only new materials and goods (save where they have been repaired in accordance with Good Industry Practice) of a satisfactory quality.		✓	
[52.10-52.11] The provision of all Spare Parts and Special Tools required for the Maintenance Services (including the provision of valid calibration certificates) and which meet the technical and safety requirements of the Maintenance Specification.		✓	
[52.14] Failure to maintain adequate stocks for the Minimum Spare Parts Pool at the Depot, manage reorders and lead times and review of the level of Minimum Spare Parts Pool.		✓	
[52.14] Review and variation of the Minimum Spare Parts Pool	✓		
[52.15] Effecting repairs of all defects in, failures or damage to the ETN irrespective of cause, excluding the Free Issue Fare Collection Equipment, causing minimum disruption to the ETN.		✓	
[52.16] Cost of repairs referred to at 52.15 above to the extent that any damage to the ETN is caused by: 1) a breach of the Infraco Contract by Infraco or 2) any negligent act or omission by the Infraco or any Infraco Party.		✓	
[52.17] Cost of repairs referred to at 52.15 above to the extent that any damage to the ETN is not caused by: 1) a breach of the Infraco Contract by Infraco or 2) any negligent act or omission by the Infraco or any Infraco Party.	✓		
[52.18] Failure to repair or replace the ETN to a condition which meets the requirements of the Maintenance Specification.		✓	
[52.19] Temporary Repairs and obtaining prior approvals.		✓	
[52.20/52.21] Failure to provide assistance, information and advice to tie and the Operator which is reasonably required in the case of incidents or failures affecting the ETN and reporting thereon.		✓	
[52.22] Failure to have competent resources available to carry out the repairs at the site of the failure where this is the most efficient manner of dealing with the failure.		✓	
[52.23] Failure to report and propose a solution to defects where rectification falls within the scope of the Infrastructure Maintenance Services in the ETN which may prejudice safety or reliable operation of the ETN.		✓	
[52.24] Failure to provide additional systems availability requested by tie following Infraco's confirmation of its ability to so provide. ¹²		✓	
[52.25] Failure to keep up to date and supply a maintenance manual, electronically and free of charge, to tie's representative.		✓	
[52.26] Failure to provide and maintain the Control Room. ¹³		✓	

¹¹ Obligation to be clarified.

¹² Discussions as to payment of additional availability ongoing.

Risk: Maintenance	Allocation		
	Public Sector	Private Sector	Shared
[53] Use, handling, removal and disposal of Hazardous Materials and keeping an up to date register of same.		✓	
[54] Maintenance of Technical Records and Computer Systems.		✓	

Risk : Quality, Testing and Examination	Allocation		
	Public Sector	Private Sector	Shared
[35.1] Failure of the materials and workmanship to be as described in the Infraco Contract. Testing and examination of the quality, weight or quantity of any materials used before use in the Infraco Works.		✓	
[35.2] Costs of and supply of samples.		✓	
[35.3/41.2/44.2/47.2] Costs of any specified tests.		✓	
[35.4] Costs of tests not identified in the Infraco Contract but requested by tie .		✓	
[36.1] Failure to give 48 hours notice to allow examination of work prior to covering up.		✓	
[36.2] Cost of uncovering where Infraco Works are found to be in accordance with Agreement.	✓		
[36.2] Cost of uncovering where Infraco Works are found not to be in accordance with Agreement.		✓	
[37.1] Removal and replacement of unsatisfactory workmanship or materials.		✓	
[37.5] Costs of opening up and testing for unsatisfactory work and materials following repeated non-compliance.		✓	
[38.3] Urgent repairs carried out by tie which the Infraco was liable to carry out at its own expense under the Agreement and which in the opinion of tie's Representative, acting reasonably, is necessary by reason of emergency or an immediate threat to health and safety.		✓	
[38.4] Urgent repairs carried out by the Infraco (except to the extent such work results from Infraco's default).	✓		
[40] Rectification of errors or omissions in the Infraco Works.		✓	
[41 and 42] Completion and Certification of Milestones.	✓	✓	
[43] Appointment of Tram Inspector and compliance with obligations in the Tram Inspector Agreement and cooperation regarding related matters.	✓	✓	
[43.10] Costs of appointment and services of the Tram Inspector.	✓		
[44.1/45.1/47.1] Failure to inspect the Infraco works on the dates specified.	✓		

¹³ Subject to BBS confirmation of its obligations

Risk : Quality, Testing and Examination	Allocation		
	Public Sector	Private Sector	Shared
[44.2/45.2/47.2] Costs of tests including necessary repetitions.		✓	
[44.3/45.3/46.4/47.3] Failure to issue certificates on completion of works.	✓		
[44/45/46/47] Failure to complete works in accordance with the Infraco Contract.		✓	
[46.2] Carrying out and completion of Snagging List works.		✓	
[47.2/47.4] Failure to complete T5 and to satisfy tie that T5 is complete and that a Reliability Certificate should be issued.		✓	
[48] Tests, surveys, trials or searches at tie's request where the defect or fault is one for which the Infraco is not liable under the Agreement.	✓		
[48] Tests, surveys, trials or searches at tie's request where the defect or fault is one for which the Infraco is liable under the Agreement.		✓	
[55.3] Costs associated with surveys and audits which do not show non-compliance by the Infraco.	✓		
[55.3] Failure to use reasonable endeavours to minimise disruption to the provision of the Maintenance Services when carrying out a survey or audit.	✓		
[55.4] Costs associated with surveys and audits which show a material non-compliance by the Infraco.		✓	
[55.5/55.6] Failure to carry out rectification in agreed timescales and to the required standard.		✓	
[56.1] Failure to comply with Schedule 6 Maintenance Payment Regime.		✓	
[56.2] Failure to provide required personnel for Maintenance Services performance meetings.		✓	
[56.3-56.5] Failure to submit Service Quality Reports, Annual Service Reports and Self-Monitoring Plans (and failure to comply with such plan) at the required times.		✓	
[56.6] Failure to inform tie where the Maintenance Services have not been delivered and failure to assist tie in inspecting and observing the monitoring procedures.		✓	
[56.8] Costs of and conducting of increased monitoring as a result of Underperformance Warning Notices being issued.		✓	
[105.1.2] Failure to operate a quality management system in accordance with BS EN ISO 9001:2000.		✓	

Risk : Programme	Allocation		
	Public Sector	Private Sector	Shared

Risk : Programme	Allocation		
	Public Sector	Private Sector	Shared
[60.1/60.9/62.1] Failure to progress Infraco Works with due expedition and in a timely and efficient manner in accordance with the Programme and to mitigate any delays.		✓	
[60.4] Deemed acceptance of a revised programme due to failure by tie's Representative to accept, reject or request further information within 10 Business Days in respect of revised programmes proposed by the Infraco.	✓		
[60.2/60.3/60.5/60.7] Failure to update, submit changes to and provide further information in respect of the revised programme proposed by Infraco.		✓	
[61] Acceleration of progress to achieve Planned Sectional Completion Dates.		✓	
[61] Cost in accelerating progress where tie requires an earlier completion date or where there has been stoppages preventing completion in time for the Planned Sectional Completion Date.	✓		
[62] Late completion of any Section resulting in LADs.		✓	
[62] Failure to deliver a Tram to the Depot by the Agreed Delivery Date.		✓	
[62.11] Tram exceeding Maximum Tram Weight.		✓	
[87.1] Time and cost of suspension of the works where necessary because of Infraco breach and for health and safety reasons.	✓		
[87.1] Suspension by reason of Infraco breach affecting in respect of health and safety of persons and property.		✓	
[87.1] Failure to properly protect and secure the works during a suspension, as required by tie .		✓	
[87.2] Occurrence of abandonment or omission of Infraco Works if permission to resume not granted by tie within 6 months.	✓		

Risk : Relief Events (time) and Compensation Events (time and/or costs)	Allocation		
	Public Sector	Private Sector	Shared
[Definition of Compensation Event] tie failure to give possession or access including refusal of third party to permit Infraco to exercise occupation rights.	✓		
[Definition of Compensation Event] Occurrence of any delay caused by CEC stopping up streets.	✓		
[Definition of Compensation Event] Execution of Utilities Works or MUDFA works.	✓		
[Definition of Compensation Event] Breach by tie or any tie Party which adversely affects the performance of the Infraco Works.	✓		
[Definition of Compensation Event] Discovery of unexploded ordnance, unidentified utility apparatus or contaminated land.	✓		

Risk : Relief Events (time) and Compensation Events (time and/or costs)	Allocation		
	Public Sector	Private Sector	Shared
[Definition of Compensation Event] Instructions from tie which result in disruption or cost to the Infraco.	✓		
[Definition of Compensation Event] Failure by tie to obtain any Land Consent, Building Fixing Agreement, Consent, land agreement or TRO.	✓		
[Definition of Compensation Event] Protestor Action which lasts for more than 14 days.	✓		
[Definition of Compensation Event] Power Failure or bursting of pipes, apparatus save when caused by Infraco.	✓		
[Definition of Compensation Event] Vandalism impacting ETN.			
[Definition of Compensation Event] Operator Events.	✓		
[Definition of Compensation Event] Any breach by Network Rail of the Asset Protection Agreement or the Network Rail Agreement.	✓		
[Definition of Compensation Event] Malfunction or non-interoperability of free issue material.	✓		
[Definition of Compensation Event] A breach by the Tram Inspector of the Tram Inspector Agreement.	✓		
[Definition of Compensation Event] Suspension of the Works where not due to Infraco breach.	✓		
[Definition of Compensation Event] Carrying out of rescheduled tests or inspections where tie failed to attend the scheduled test.	✓		
[Definition of Compensation Event] Disruption to the Infraco Works caused by tie exercising its right of access at the Depot.	✓		
[Definition of Relief Event] Occurrence of any referable delay caused by orders or directions from tie's Representative in respect of the removal of unsatisfactory work or materials	✓		
[49.1/49.3] Failure to remove materials and equipment at the correct time.		✓	
[Definition of Relief Event] Protestor Action against tie that last for less than 14 days or against any unconnected third party.	✓		
[Definition of Relief Event] Acts of terrorism.	✓		
[Definition of Relief Event] UK strike or industrial dispute affecting Infraco workforce.	✓		
[Definition of Relief Event] Force Majeure Event.	✓		
[Definition of Relief Event] Fire, explosion, lightning, tempest, flood (other than flood caused by bursting or overflowing of apparatus or pipes), or earthquakes.	✓		
[Definition of Relief Event] Failure by any Utility to carry out works or provide services which they would ordinarily provide.	✓		
[Definition of Relief Event] Any accidental loss of or damage to a material part of the Infraco Works.	✓		
[Definition of Relief Event] Power failure or bursting or overflowing of apparatus or pipes.	✓		
[64.2/65.2] Failure to notify tie within 20 Business Days of awareness		✓	

Risk : Relief Events (time) and Compensation Events (time and/or costs)	Allocation		
	Public Sector	Private Sector	Shared
of relief event/compensation event and to notify in the prescribed manner.			
[64.8/65.8] Failure to identify long lead time works or enabling works; to manage interface with CEC, any Approval Body or third party; or to identify instructions required from tie .		✓	
[64.9/65.9] Any other cause of delay not being a Relief Event or Compensation Event or caused by Infraco breach.		✓	
[80.14] Delay/costs due to a tie Change (save where the Infraco could have prevented the need for the tie change).	✓		

Risk : Payment and Measurement	Allocation		
	Public Sector	Private Sector	Shared
[41.1] Failure to attend testing relevant to Milestone achievement.	✓		
[41.3] Failure to notify tie in relation to the achievement of a milestone (including a critical milestone).		✓	
[66] Payment of Contract Price.	✓		
[67/68] Submission of applications for payment within required timescales and provision of required information.		✓	
[67/68] Payment of Infraco applications for payment and certification of sums approved.	✓		
[67/68] Failure to adhere to requirement to procure collateral warranties prior to payment.		✓	
[69.1] Interest on Late Payment at Base Rate + 2%.	✓		
[69.2] Set-off of amounts due to tie from the Infraco.		✓	
[69.3] Failure to issue a notice of withholding within the prescribed time period.	✓		
[70.1] Payment of tax on any taxable supplies to tie .		✓	
[70.2] Payment of VAT properly chargeable by the Infraco on the supply to tie of any goods/services under the Infraco Contract.	✓		
[70.3] Provision of support in relation to VAT disputes.	✓	✓	
[70.5] Reimbursement of VAT element of reimbursement or indemnification.	✓	✓	

Risk : Warranties	Allocation		
	Public Sector	Private Sector	Shared
[75] Breach of corporate warranties given to the best of each Infraco Member's knowledge, information and belief.		✓	

Risk : Required Insurances	Allocation		
	Public Sector	Private Sector	Shared
[76.1] Failure to obtain and maintain Required Insurances.		✓	
[76.11/76.14] Failure to comply with the terms of the Required Insurances or OCIP Insurances.		✓	
[76.12] No availability of Required Insurances at commercially reasonable rates or maintenance of Required Insurances is at above commercially reasonable rates.			✓
[76.16] Excesses/deductibles under OCIP Insurances or Additional Insurances where not the fault of tie or the Infraco.			✓
[76.16] Excesses/deductibles under OCIP Insurances or Additional Insurances where the fault of Infraco.		✓	
[76.16] Excesses/deductibles under OCIP Insurances or Additional Insurances where the fault of tie or where tie has altered the level.	✓		
[76.17] Failure to obtain and maintain OCIP Insurances	✓		
[76.18] Failure to obtain and maintain Additional Insurances.		✓	
[76.20] Failure to notify tie of claims under the Required Insurances or Additional Insurances.		✓	
[76.24] No availability of Additional Insurances at commercially reasonable rates.	✓		

Risk : Indemnities, liability and sole remedy ¹⁴	Allocation		
	Public Sector	Private Sector	Shared
[49.2] Loss or damage to Infraco's Equipment, Temporary Works, goods or materials, Trams, engineers works vehicles, Spare Parts, Special Tools, save for death, injury or damage to property caused by tie or CEC.		✓	
[[77.1] ¹⁵ The Infraco to indemnify the Indemnified Parties from and against any and all claims, suits, losses, liabilities damages, penalties, fines, forfeitures, and the costs and expenses incident thereto (including without limitation any legal costs of defence) as a result of the Infraco's negligence or breach of the Agreement.		✓	
[77.2] Death, injury or damage to property caused by tie or CEC.	✓		
[77.4-77.7] Loss resulting from claims made by Forth Ports, Stakis or Network Rail. ¹⁶		✓	
[77.8] Death, injury or fraud.	✓	✓	
[77.10] Indirect Losses.	✓	✓	

¹⁴ Liability cap, exclusive remedy and defects liability currently under negotiation.

¹⁵ Subject to negotiation on OCIP cap re damage to property or the Infraco Works.

¹⁶ Currently under discussion.

Risk : Indemnities, liability and sole remedy ¹⁴	Allocation		
	Public Sector	Private Sector	Shared
[77.15] Payment of tonnage, royalties rent for stone, gravel, clay or other necessary materials.		✓	
[77.17] Failure to take any measure to ensure tie is not committing an offence where the Infraco has caused tie to commit an offence.		✓	

Risk : Changes	Allocation		
	Public Sector	Private Sector	Shared
[79.2] Failure to maintain a change control register and provide a copy (and updates) to tie .		✓	
[80] tie Changes	✓		
[80.4/80.8] Failure to comply with Estimate time limits		✓	
[80.6/80.14] Failure to include attempt to minimise costs, need for, and impact of the tie Change		✓	
[80.7] Failure to demonstrate that it is appropriate to subcontract for the tie Change and obtain best value for money		✓	
[80.8] Failure to agree the Estimate			✓
[80.10.3.3] Refusal to implement tie change on grounds that it would increase probability of an Infraco breach	✓		
[80.11] Withdrawal of tie Notice of Change	✓		
[80.12] Deemed withdrawal of a tie Change due to failure to issue tie Change Order within 30 days of agreement on Estimate			✓
[80.13] No EoT or Costs of Infraco could have foreseen the need for or materially reduced the scope of the tie charge.	✓		
[80.15-80.17] Failure by the Infraco to notify tie within set periods of matters which may constitute a tie Change		✓	
[81] Infraco Changes.		✓	
[81.1] Failure to notify tie of matters which may constitute an Infraco Change.		✓	
[81.2.1] Reduction in Contract Price if Infraco Change results in lower costs.		✓	
[81.2.2] Increase in costs to Infraco if such increased costs result from an Infraco Change.		✓	
[81.3] Proposal of a change which might result in a saving of more than £20,000.		✓	
[82.2] Failure to take reasonable steps to minimise the duration of any Small Works.		✓	
[82.3] Failure to carry out and complete any Small Works in accordance with Small Works Cost Notice.		✓	
[82.5] Payment of Small Works.	✓		
[83.2] Failure to take reasonable steps to minimise the duration of any Accommodation Works.		✓	

Risk : Changes	Allocation		
	Public Sector	Private Sector	Shared
[83.3] Failure to carry out and complete any Accommodation Works in accordance with Accommodation Works Cost Notice.		✓	
[83.5] Payment of Accommodation Works.	✓		
[84] ¹⁷ Time and cost implications of Qualifying Changes in Law (in excess of the thresholds).	✓		
[84.1/84.2] Agreement and discussion on effects and mitigation measures relating to Qualifying Changes in Law.	✓	✓	
[84.2] Failure to use all reasonable endeavours to minimise increase in costs, to mitigate effects and to implement changes in the most cost effective manner.		✓	
[84.3] Failure to implement the change in all circumstances (except to the extent that such change is not necessary to implement the Qualifying Change in Law)		✓	
[84.4.1] Payment in respect of Qualifying Changes in Law which exceed in aggregate £150,000.	✓		
[84.4.2] Where the limit of £150,000 in aggregate has been exceeded, payment in respect of SDS Qualifying Changes in Law which exceed in aggregate £15,000 in respect of each and every event.	✓		
[84.4.3], Where the limit of £150,000 in aggregate has been exceeded, payment in respect of Tram Supply Qualifying Changes in Law which exceed in aggregate £30,000 in respect of each and every event.	✓		
[84.4.4] Where the limit of £150,000 in aggregate has been exceeded, payment in respect of Tram Maintenance Qualifying Changes which exceed in aggregate £15,000 in respect of each and every event.	✓		
[84.4.5] Where the limit of £150,000 in aggregate has been exceeded, payment in respect of Infrastructure Maintenance Qualifying Changes in Law which exceed in aggregate £75,000 in respect of each and every event.	✓		
[84.4] Payments in respect of Qualifying Changes in Law within the thresholds.		✓	
[84.5] General Change In Law, subject to Infraco's entitlement to benchmark.		✓	
[85.1] The cost of any Phase 1b option.	✓		
[86.2] Failure to provide the services as requested by tie in relation to any Network Expansion.		✓	
[86.2] The cost of Infraco providing services in relation to any Network Expansions.	✓		

¹⁷ Currently under negotiation.

Risk : Termination	Allocation		
	Public Sector	Private Sector	Shared
[87] Suspension of Work (unless necessary by reason of default on the part of Infraco and for health and safety reasons) for more than 6 months.	✓		
[88] Termination on tie Default: agreement terminates 30 days after tie receives Infraco notice specifying default. tie has 30 days to rectify, if capable of rectification.	✓		
[tie Default definition] <ul style="list-style-type: none"> • Failure to pay 10% of the Contract Price prior to Service Commencement or two months maintenance payments; • breach of tie's material obligations making it impossible for Infraco to perform for continuous period of 45 Business Days; • tie Insolvency Event; • tie breach of assignation provisions; and • Change in Law make Infraco Works impossible or illegal. 	✓		
[88.5] Failure to remove Infraco Equipment following termination.		✓	
[88.8] tie Default termination payments: all works carried out as valued; prelims; supplies/materials committed under contract; demobilisation costs; subcontractor breakage costs; loss of profit (under negotiation by BBS).	✓		
[88.9] Suspension of works for non-payment by tie .	✓		
[89] Voluntary Termination by tie three years after the issue of the first certificate of Service Commencement and equivalent payment provisions to termination for tie Default.	✓	✓	
[90] Termination due to Infraco default unless a rectification plan is agreed and adhered to in respect of rectifiable defaults.		✓	
[Infraco default definition] <ul style="list-style-type: none"> • Infraco insolvency event (rectifiable); • Infraco breach of an obligation under the Infraco Contract which materially and adversely affects the Infraco Works (rectifiable); • Infraco does not confirm its acceptance of an increase in LDs cap; • Infraco's unremedied failure to take out and maintain the Required Insurances • failure to achieve Sectional Completion Date or the Service Commencement Date on or before the date falling 12 months after the Planned Service Commencement Date or Planned Sectional Completion Date; • change in legal status or control of the Infraco which is materially prejudicial to carrying out and completing the Infraco Works (rectifiable); • permanent abandonment of the Infraco Works or a material part of them; 		✓ ✓ ✓ ✓ ✓ ✓ ✓	

Risk : Termination	Allocation		
	Public Sector	Private Sector	Shared
<ul style="list-style-type: none"> Infraco's failure to commence Works within 90 days of Commencement Date; Infraco's suspension of works without cause for 15 Business Days after receipt of a written notice to proceed; the issue of 4 or more Underperformance Warning Notices in any 12 month period; and failure of the Infraco to take out and maintain the Required Insurances (rectifiable). 		✓	
[91] Termination for Force Majeure (payments to be made as per tie Default).	✓	✓	
[92] Termination if Infraco or Sub-Contractor commits a Prohibited Act (payments to mirror Infraco Default payments).		✓	
[93] Infraco's persistent breach of its obligations, save for termination of sub-contractors and wipe clean .		✓	

Risk : Miscellaneous	Allocation		
	Public Sector	Private Sector	Shared
[50.3] Compliance with CDM responsibilities.			✓
[51.1] Failure to report accidents to tie and HSE or ORR as appropriate.		✓	
[51.2] Failure to liaise with the Emergency Services.		✓	
[58] TUPE responsibilities.	✓	✓	
[58.9] Costs of compliance with TUPE provisions.	✓		
[59.5] Reasonable and demonstrable costs arising from a step-in for Health and Safety and Environmental reason or from Infraco taking actions as required under the Step-In provisions.		✓	
[71.2] Employment related and land fill tax fluctuations where tie is informed of such increase within 3 months.	✓		
[71.2] Tax fluctuations where tie is not informed of such increase within 3 months.		✓	
[72] Failure to provide and to procure that sub-contractors provide details of labour as requested by tie.		✓	
[73] Failure to secure continuous improvement in the Infraco Works and to provide reasonable assistance to tie in respect of best value performance and improvement including the preparation of an Annual Service Report..		✓	
[94.3] Failure to return the Deliverables and any information following termination or expiry.		✓	
[95] Failure to provide the Handback Package, to secure continuity in services and assist in the hand over following termination.		✓	
[[98.1-98.2] Unauthorised Assignment.	✓	✓	

Risk : Miscellaneous	Allocation		
	Public Sector	Private Sector	Shared
[100.1] Creation of Security Interest over the ETN, the Assets or the Infraco Contract.		✓	
[100.2] Disposal of any right in any Asset if doing so has a material adverse effect on the ETN or the rights of CEC in such Assets.		✓	
[101] Unauthorised disclosure of and inadequate safeguarding of confidential information.	✓	✓	
[101.7] Breach of terms of FOISA.	✓		
[101.7] Failure to provide to tie assistance in compliance with FOISA obligations.		✓	
[102.2] Failure properly to assign IPR or grant appropriate licences to tie.		✓	
[102.9] Failure to use reasonable endeavours to procure licences of Third Party Software and commercially available software for tie.		✓	
[102.10] Failure to ensure back up of Deliverables in accordance with Good Industry Practice.		✓	
[102.12] Failure to provide source code, object code and documentation in relation to Third Party Software to tie.		✓	
[102.14] Failure to ensure auditable records and specifications are developed in relation to Infraco Software and that its design and development to industry standard so that a qualified person could verify its performance in relation to equipment and functional requirements.		✓	
[102.15] Failure to provide coding and ancillary programs to generate code in relation to the Infraco Software.		✓	
[102.16] Failure to place and the cost of placing source code of the Infraco Software in escrow.		✓	
[102.17/102.18] Failure to create, maintain, report on, update, hand over and allow access to the Technical Library.		✓	
[103] Breach of data controller obligations and other prescribed obligations in relation to personal data.		✓	
[104.1-104.2] Failure to keep all Deliverables, invoices, timesheets and expense claims in accordance with Good Industry Practice and in good order and to make the same available for inspection.		✓	
[104.3-104.5] Failure to provide further information as requested by tie, to comply with storage, usage or processing requests or to provide required assistance.		✓	
[104.6] Failure to provide information to the Infraco to allow it to perform its obligations under the Infraco Contract.	✓		
[105] Failure to operate, audit, review and comply with the HSQE system.		✓	
[105.3] Defect in the Infraco Works caused by non-compliance of a Deliverable with the HSQE System.		✓	
[107] Failure to do any act or execute any document to give effect to the Infraco Contract.	✓	✓	
[110] Acting as tie's where not authorised to do so.		✓	

Risk : Miscellaneous	Allocation		
	Public Sector	Private Sector	Shared
[115] Unlawful discrimination.		✓	
[118] Failure to act reasonably when exercising discretion. ¹⁸		✓	
[119] Failure to mitigate losses.	✓	✓	
[17] Failure to arrange interface with operator.	✓		

Risk : Dispute Resolution CURRENTLY UNDER NEGOTIATION	Allocation		
	Public Sector	Private Sector	Shared

¹⁸ Currently under negotiation with respect to tie.